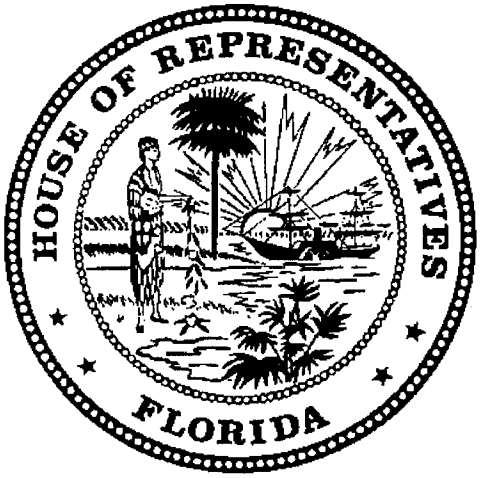

Fiscal Council

Joe Negron, Chair
Fred Brummer, Vice Chair

Friday, April 21, 2006
11:15 a.m. – 1:00 p.m.
212 Knott

Allan G. Bense
Speaker

Joe Negron
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Fiscal Council

Start Date and Time: Friday, April 21, 2006 11:15 am

End Date and Time: Friday, April 21, 2006 01:00 pm

Location: 212 Knott Building
Duration: 1.75 hrs

Consideration of the following bill(s):

HB 1473 CS Energy by Hasner
HB 857 Insurance Premium Tax by Mahon
HB 141 CS Workers' Compensation for First Reponders by Adams
HB 753 CS Deferral of Ad Valorem Property Taxes by Rivera
HJR 353 CS Increase in Homestead Exemption by Lopez-Cantera
HB 29 CS Tax on Sales, Use, and Other Transactions by Sansom
HB 69 CS Exemptions from the Tax on Sales, Use, and Other Transactions by Meadows
HB 237 CS Employment Requirements for Law Enforcement Personnel by Berfield
HB 241 CS Florida KidCare Program by Vana
HB 381 Firefighter Pensions by Gibson, H.
HB 421 (IF RECEIVED) -- Tax on Sales, Use, and Other Transactions by Reagan
HB 597 CS Contracting for Efficiency or Conservation Measures by State Agencies by Cannon
HB 897 CS Florida Retirement System by Davis, M.
HB 979 CS Property Tax Administration by Seiler
HB 1253 Broward County, Florida by Sobel
HB 1251 CS Firefighter and Municipal Police Pensions by Davis, D.
HB 1269 CS Local Occupational License Taxes by Cusack
HB 1431 CS Impact Fees by Cretul
HB 1623 CS Youth and Young Adults with Disabilities by Bean
HB 7109 Homestead Property Assessments by Finance & Tax Committee
HJR 7129 Conservation and Protection of Natural Resources and Scenic Beauty, Including Fish and Wildlife by Environmental Regulation Committee
HB 7173 Welfare of Children by Future of Florida's Families Committee
HB 7181 State Planning and Budgeting by State Administration Appropriations Committee
HB 7189 State Financial Matters by Finance & Tax Committee
HB 7197 Governmental Operations by State Administration Appropriations Committee
HB 7207 Water Management Districts by Agriculture & Environment Appropriations Committee
HB 7213 Quick Action Closing Fund by Transportation & Economic Development Appropriations Committee
HB 7235 Continuing Implementation of Constitutional Revision 7 to Article V by Judiciary Appropriations Committee
HB 1219 City of Tampa, Hillsborough County by Joyner
HB 891 Local Occupational License Taxes by Goldstein
HB 1311 CS Qualified Job-Training Organizations by Troutman
HB 1471 CS Energy Diversity and Efficiency by Attkisson
HB 987 CS Tax on Sales, Use, and Other Transactions by Gottlieb
HB 1245 North Broward Hospital District, Broward County by Sobel

NOTICE FINALIZED on 04/20/2006 16:23 by SLB

Florida House of Representatives

Fiscal Council

Allan Bense
Speaker

Joe Negron
Chair

AGENDA
Friday, April 21, 2006
11:15 a.m. – 1:00 p.m.
212 Knott Building

I. Meeting Call to Order

II. Opening Remarks by Chair

III. Consideration of the following bill(s)

HB 1473 CS Energy by Hasner
HB 857 Insurance Premium Tax by Mahon
HB 141 CS Workers' Compensation for First Reponders by Adams
HB 753 CS Deferral of Ad Valorem Property Taxes by Rivera
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HB 1245 North Broward Hospital District, Broward County by Sobel
HB 1253 Broward County, Florida by Sobel

IV. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1473 Energy
SPONSOR(S): Hasner and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	17 Y, 0 N	Holt	Holt
2) Fiscal Council		Dixon/Diez Arquelles	Kelly
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1473 implements recommendations from the Florida Energy Plan. In general, the bill creates and revises several sections of law to devise a methodology for advancing the development of renewable technologies, promoting economic growth, diversifying fuel supply, as well as, streamlining the Power Plant Siting Act. More specifically, the bill:

- Creates the Renewable Energy Technologies Grants Program;
- Creates the Energy-Efficient Products Sales Tax Holiday;
- Creates the Solar Energy System Incentive Program;
- Creates the Florida Energy Council;
- Creates a sales tax exemption for equipment, machinery, and other materials for renewable energy technologies;
- Creates a corporate investment tax credit for renewable energy technologies;
- Directs the Public Service Commission (PSC) to consider fuel diversity in reviewing 10-year site plans;
- Allows the PSC to require electric utilities to have their infrastructure exceed the National Electric Safety Code standards;
- Requires the PSC to direct a study of the electric transmission grid as well as examine the hardening of Florida's infrastructure to address issues arising from the 2004 and 2005 hurricane seasons; and
- Streamlines the Power Plant Siting Act by setting new timelines and streamlining procedures.

The Revenue Estimating Conference estimates that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, will result in a negative fiscal impact of $11.0 million to state government and $1.2 million to local governments in FY 2006-07, and of $16.5 million to state government and $1.2 million to local governments in FY 2007-08. HB 5001, the General Appropriations Act, contains $15 million ($8.6m in General Revenue and $6.4 in Trust) for the Renewable Energy Technologies Grant Program and $5 million in General Revenue for the Solar Energy System Incentives Program.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill creates the Florida Energy Council to advise the Governor, the President of the Senate, and the Speaker of the House of Representatives on energy issues. It also requires the PSC to direct a study on Florida's electric transmission grid. The report is to additionally address hardening of the state's infrastructure in response to the issues arising from the 2004 and 2005 hurricane seasons.

Ensure Lower Taxes-The bill creates the following: Renewable Energy Technologies Grant Program, Energy-Efficient Products Sales Tax Holiday, Solar Energy Systems Rebate Program, sales tax exemption for equipment, machinery and other renewable energy technologies, and renewable energy technologies investment tax credit.

Promote Personal Responsibility/Empower Families-The bill contains rebates and tax incentives to promote the sale of energy-efficient products and the use of renewable energy technologies.

Maintain Public Security-The bill provides incentives for the investment in renewable energy and alternative fuels, which may reduce the state's dependence on imported fossil fuels. The bill requires the PSC to consider fuel diversity when analyzing the utilities' 10-year site plans, thereby also potentially easing the state's dependence on any particular fuel for the generation of electricity. The bill also allows the PSC to require electric utilities to construct their infrastructure to standards that exceed the National Electric Safety Code.

B. EFFECT OF PROPOSED CHANGES:

General Background

On November 10, 2005, Governor Jeb Bush issued Executive Order #05-241 directing the Department of Environmental Protection (DEP) to develop a comprehensive energy plan. On December 14, 2005, the Secretary of DEP hosted the Florida Energy Forum where various parties were able to provide input in developing the plan. As required by the Executive Order, DEP issued the Florida Energy Plan on January 17, 2005.

The energy plan contained recommendations that spanned several areas. Those areas covered issues of diversification, conservation, and economic incentives. HB 1473 comprehensively implements initiatives from each of those areas.

According to research conducted by DEP in developing the Florida Energy Plan, the following background information was provided:

Florida's economy and quality of life depends on a secure, adequate and reliable supply of energy. As the fourth most populous state, Florida ranks third nationally in total energy consumption. With more than 17 million citizens and nearly 1,000 new residents arriving daily, Florida is one of the fastest growing states in the nation. Because of its expanding economy, current forecasts indicate that Florida's electricity consumption will increase by close to 30 percent over the next ten years.

Since the last review of Florida's energy policy in 2000, several unpredictable events have heightened concern over energy reliability, security, and supply. The 2003 blackout in the northeast, along with

tremendous back-to-back hurricane seasons in 2004 and 2005, demonstrated the impact power outages and fuel interruptions have on the nation's economic welfare.

Producing less than one percent of the energy it consumes and limited by its geography, Florida is more susceptible to interruptions in energy supply than any other state. Unlike other states that rely on petroleum pipelines for fuel delivery, more than 98 percent of Florida's transportation fuel arrives by sea. The state's reliance on imported petroleum products, in addition to its anticipated growth in consumption, underscores its vulnerability to fluctuations in the market and interruptions in fuel production, supply and delivery.

Energy Production and a Growing Economy

Florida depends almost exclusively on other states and nations for supplies of oil and gasoline, generating less than one percent of the nation's crude oil production annually. To generate electricity, Florida primarily relies on natural gas, coal and oil imports.

Together, fossil fuels represent 86 percent of Florida's total generating capacity. Less than 10 percent of its generating capacity is derived from cleaner nuclear and renewable fuels. In fact, no new nuclear plants have entered service in Florida since 1983.

Current forecasts indicate that new generation capacity will be 80 percent natural gas-fired and 19 percent coal-fired. Meeting these projections could prove expensive at today's prices and lead to an over-reliance on one fuel type, affecting the reliability of electric utility generation supply in Florida. While expansions for natural gas capacity are needed and already underway, improving generation fuel diversity would enhance reliability over the long-term. Too great a reliance on a single fuel source leaves Floridians subject to the risks of price volatility and supply interruption.

A New Class of Energy

Although the nation's reliance on traditional fossil fuels is currently high, Florida is investing in alternative fuels and developing "next generation" energy technologies. In 2003, Governor Jeb Bush launched "H2 Florida" to accelerate the commercialization of hydrogen technologies and spur economic investment in Florida's economy. With a four to one return on investment, Florida and its federal partners have invested $9 million to date in hydrogen infrastructure. Construction of a "hydrogen highway" is underway, 28 hydrogen demonstration projects are in progress and more than 100 hydrogen research and development projects are taking place at Florida's universities.

Utilization of biofuels is in its infancy with the cost of renewable fuels relatively high compared with traditional hydrocarbon fuels. Currently, Florida has just one biodiesel facility and, absent a manufacturing plant, imports ethanol from refineries outside of the state. Increasing production, supply and infrastructure of biofuels through financial incentives would provide both economic and environmental returns for the state. Likewise, a stronger investment both residentially and commercially in solar technology would not only reduce utility costs but generate pollution-free power for Floridians. To date, solar technology has remained largely inefficient and expensive, however, costs are gradually decreasing as system quality and reliability increases. To encourage continued investment in solar energy, systems received a permanent exemption from Florida sales and use tax in 2005.

Proposed Changes

Section 1: Legislative findings and intent: This section provides legislative findings and intent. Generally, the Legislature finds that advancing the development of renewable energy efficiency and technologies is important for the state's future, its energy stability and diversity, its environment, and the protection of its citizens' public health. Moreover, the development of renewable energy technologies has a correlated effect in reducing the demand for foreign fuels. To assist in the widespread commercialization and application of renewable energy, the findings promote marketing, among other

things, to stimulate economic growth, to generate ongoing research and development, to use the abundance of natural and renewable energy sources. These objectives are in addition to using the state's ability to attract significant federal research and development funds for its general welfare.

Section 2: Short title: The bill provides that ss. 377.801-377.806 may be cited as the "Florida Renewable Energy Technologies and Energy Efficiency Act."

Section 3: Purpose: This act is intended to provide matching grants to stimulate in-state capital investment and promote statewide utilization of renewable technologies. In order to accomplish these goals, the targeted grants program is designed to: 1) advance renewable technologies, and 2) encourage the residential and commercial use of incentives, such as rebates, tax exemptions, and regulatory certainty.

Section 4: Definitions: The bill provides the following definitions:

(1) "Act" means the Florida Renewable Energy Technologies and Energy Efficiency Act.
(2) "Approved metering equipment" means a device capable of measuring the energy output of a solar thermal system that has been approved by the commission.
(3) "Commission" means the Florida Public Service Commission.
(4) "Department" means the Department of Environmental Protection.
(5) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.
(6) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.
(7) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.
(8) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.
(9) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.
(10) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.

Section 5: Renewable Energy Technologies Grant Program: The bill establishes within DEP the Renewable Energy Technologies Grant Program. The program provides renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies. Eligible entities for award consideration include: 1) municipalities and county governments, 2) established for-profit companies licensed to do business in the state, 3) in-state universities and colleges, 4) not-for-profit organizations, 5) other qualified persons, as determined by the department. Rulemaking authority is granted to DEP for adoption of application requirements, ranking application, and administering grant awards. Criteria are provided in the bill for DEP to consider when assessing applications for an award. It is also incumbent upon DEP to solicit the expertise of other state agencies and such solicited agencies shall be cooperative with DEP.

Section 6: Energy-Efficient Products Sales Tax Holiday: During the period from 12:01 a.m., October 5, through midnight, October 11, in each year from 2006 to 2009, a tax-free week is established by the bill, and it shall be designated the Energy Efficiency Week. Specifically, the tax levied under ch. 212, F.S., may not be collected on the sale of energy-efficient products having a per product selling price of $1,500 or less. This exemption only applies to items that are for noncommercial home or personal use. "Energy-efficient product" is defined as a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency and by the United States

Department of Energy as meeting or exceeding each agency's requirements for energy efficiency or that has been designated as meeting or exceeding the requirements under the Energy Star Program of either agency.

Section 7: Solar Energy System Incentives Program: Under this program, three solar rebate incentives are created. From July 1, 2006, through June 30, 2010, any Florida resident who purchases and installs a solar photovoltaic system, a solar thermal system, or a solar thermal pool heater is eligible to apply. However, application for a rebate must be made within 90 days after the purchase, and each system must meet the specific criteria outlined in the bill.

In general, the new solar photovoltaic system must be 2 kilowatts or larger, and the new solar thermal system must provide at least 50 percent of a building's hot water consumption. For the specific eligibility requirements, s. 337.806 reads in part:

> (2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.
> (a) Eligibility requirements. A solar photovoltaic system qualifies for a rebate if:
> 1. The system is installed by a state-licensed master electrician, electrical contractor, or solar contractor.
> 2. The system complies with state interconnection standards as provided by the commission.
> 3. The system complies with all applicable building codes as defined by the local jurisdictional authority.
> (b) Rebate amounts. The rebate amount shall be set at $4 per watt based on the total wattage rating of the system. The maximum allowable rebate per solar photovoltaic system installation shall be as follows:
> 1. $20,000 for a residence.
> 2. $100,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization.
> (3) SOLAR THERMAL SYSTEM INCENTIVE.
> (a) Eligibility requirements. A solar thermal system qualifies for a rebate if:
> 1. The system is installed by a state-licensed solar or plumbing contractor.
> 2. The system complies with all applicable building codes as defined by the local jurisdictional authority.
> (b) Rebate amounts. Authorized rebates for installation of solar thermal systems shall be as follows:
> 1. $500 for a residence.
> 2. $15 per 1,000 Btu for a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization including condominiums or apartment buildings. Btu must be verified by approved metering equipment.
> (4) SOLAR THERMAL POOL HEATER INCENTIVES.—
> (a) Eligibility requirements. – A solar thermal pool heater qualifies for a rebate if:
> 1. The system is installed by a state-licensed solar or plumbing contractor.
> 2. The system complies with all applicable building codes as defined by the local jurisdictional authority.
> (b) Rebate amounts. – Authorized rebates for installation of solar thermal pool heaters shall by $100 per installation.

Moreover, the total dollar amount of all DEP-issued rebates is subject to any fiscal year appropriation for the program. DEP will publish on a regular basis a running rebate fund balance for each fiscal year. If applications exceed the available funds, unfunded applications roll-over to the next year with priority

consideration. DEP shall adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to develop rebate applications and administer the issuance of rebates.

Section 8: Florida Energy Council: The bill creates the Florida Energy Council within DEP as an energy advisory group. The council is to advise the Governor, the President of the Senate, and the Speaker of the House of Representatives on current and projected energy issues including, but not limited to, transportation, generation, transmission, distributed generation, fuel supply issues, emerging technologies, efficiency and conservation. This diverse council shall be comprised of stakeholders, and may include utility providers, alternative energy providers, researchers, environmental scientists, fuel suppliers, technology manufacturers, environmental, consumer and public health use the principles of reliability, efficiency, affordability, and diversity in developing its recommendations. There will be nine voting members:

- The Secretary of DEP, or designee, serves as the council's chair
- The Chair of PSC, or designee, serves as the council's vice chair
- The Commissioner of Agriculture and Consumer Services, or designee
- Two members appointed by the Governor
- Two members appointed by the President of the Senate
- Two members appointed by the Speaker of the House of Representatives

Prior to September 1, 2006, all initial appointments shall be made. The appointments made by the Governor, the President of the Senate, the Speaker of the House of Representatives are for a term of two years, with members serving until their successors are appointed. Any vacancies are filled in the same manner as original appointments and are for the remainder of a vacated membership. Members are entitled to travel reimbursement and per diem, but they serve without compensation.

Additionally, DEP provides primary staff support to the council and it shall electronically record the meetings and preserve those recordings pursuant to chapters 119 and 257. Rulemaking authority is granted to DEP to implement the provisions of this section.

Section 9: Sales Tax Exemption: A sales tax exemption is created in s. 212.08, F.S., for equipment, machinery, and other materials for renewable energy technologies, and is available to a purchaser through a refund of previously paid taxes. This exemption is designed to assist in stimulating the development of in-state hydrogen technologies and biofuels. Enhancing the production, distribution and retail mechanisms supporting biofuels, this incentive may result in a reduction in the consumption of fossil fuels. There are currently four hydrogen fueling stations planned for installation, and those facilities are partially funded by DEP. Florida has no ethanol fuel production facilities or retail outlets selling ethanol blends to the public.

The bill creates the following definitions as used in this section:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means nominally anhydrous denatured alcohol produced by the fermentation of plant sugars meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

The bill provides that the in-state sale or use of the following items is excluded from the tax imposed by this chapter:

a. Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of $2 million in tax each state fiscal year.

b. Commercial stationary hydrogen fuel cells, up to a limit of $1 million in tax each state fiscal year.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E85), including fueling infrastructure, transportation, and storage, up to a limit of $1 million in tax each state fiscal year. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption provided by this subsection.

DEP is the designated lead agency for submitting the list of items eligible for the exemption to the Department of Revenue (DOR). The bill directs DEP, in consultation with DOR, to develop the application for exemption, along with minimal criteria for the application content. Applicants are to also submit a sworn statement of information accuracy and to the section requirements being met. An application processing schedule is also outlined in the bill.

Rulemaking is granted to DOR for governing the manner and form of the refund applications and to additionally establish guidelines for requisites of an affirmative showing of qualification for exemption.

Rulemaking is also granted to DEP to ensure the exemptions do not exceed the provided limits, and DEP shall determine and publish on a regular basis the amount of sales tax funds remaining in each fiscal year.

This exemption is repealed on July 1, 2010.

Section 10: Confidentiality and information sharing: This section allows for the sharing of information between DEP and DOR related to the sales tax exemption and investment tax credit.

Section 11: Corporate income tax: This is a conforming change.

Section 12: Renewable energy technologies investment tax credit: The bill establishes the renewable energy technologies tax credit. Definitions in this section mirror those used in s. 212.08(7) for biodiesel, ethanol, and hydrogen fuel cell. A term is added to this section for "eligible cost" which means:

1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.
2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1.5 million per state fiscal year for all taxpayers, and limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.
3. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $6.5 million per state fiscal year for all tax payers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subsection.

The bill outlines and application process that is handled through DEP for this credit. Rulemaking authority is granted DOR relating to the forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

DEP shall determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 13: Adjusted federal income: This section makes a conforming change.

Section 14: Ten-year site plans: Pursuant to s. 186.801, F.S., all major generating electric utilities are required to annually submit a Ten-Year Site Plan to the PSC for review. Each Ten-Year Site Plan contains projections of the utility's electric power needs for the next ten years and the general location of proposed power plant sites and major transmission facilities. As a result, the PSC performs a preliminary study of each Ten-Year Site Plan to determine whether it is "suitable" or "unsuitable." To aid in its review, the PSC receives comments from state, regional, and local planning agencies regarding various issues. Upon review completion, the PSC forwards its Ten-Year Site Plan review, to DEP for use in subsequent power plant siting proceedings.

To implement the provisions s. 186.801, F. S., the PSC has adopted Rules 25-22.070 through 25-22.072, F.A.C. These rules require electric utilities to file an annual Ten-Year Site Plans by April 1. However, utilities whose existing generating capacity is below 250 megawatts (MW) are exempt from this requirement unless the utility plans to build a new unit larger than 75 MW within the ten-year planning period.

In evaluating the 10-year site plans, the PSC is required to review:

- Need for electrical power in the area to be served.
- Anticipated environmental impact.
- Possible alternatives to the proposed plan.
- Views of appropriate local, state, and federal agencies.
- Consistency with the state comprehensive plan.
- Information of the state on energy availability and consumption.

The bill adds the "effect on fuel diversity within the state" to the above objectives considered by the PSC in evaluating the10-year site plans.

Section 15: Jurisdiction of the PSC: Section 366.04, F.S., provides that the jurisdiction of the PSC includes prescribing and enforcing safety standards for electric transmission and distribution. This bill adds the phrase "at a minimum" when describing the safety standards the PSC must adopt. This allows the PSC to adopt stricter safety standards than the National Electrical Safety Code (NESC) as needed to protect Florida's electric system from disasters.

Section 16: Powers of the PSC: Section 366.05(1), F.S., reads in part:

366.05 Powers.—

> (1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities. . .

The bill amends this section to give the PSC the power to adopt construction standards that exceed the NESC in order to ensure the reliable provision of service. In addition, the PSC is given the power to order the replacement of plant by a public utility.

Section 366.05(8), F.S., gives the PSC power over the state's electrical grid, and the authority, following certain proceeding, to require the installation or repair of necessary facilities if inadequacies with respect to the grid exist. The bill amends this section to strengthen PSC authority to require utilities to build additional facilities or repair existing facilities if the PSC determines that the electric grid is inadequate with respect to "fuel diversity or fuel supply reliability."

Section 17: The bill requires the PSC to direct a study on Florida's electric transmission grid. The study shall examine the efficiency and reliability of power transfer and emergency contingency conditions. Additionally, the study must examine the hardening of infrastructure to address issues raised from the 2004 and 2005 hurricane seasons. The results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 30, 2007.

Sections 18 through 40: These sections amend the Florida Electrical Power Plant Siting Act (PPSA). On the recommendation of the Florida Energy Plan, the proposed changes are to streamline the siting process by setting new timelines, streamlining procedures, and streamlining the determination of consistency with land use, among other things.

Created by the Legislature in 1973, the PPSA provides for certification (licensure) of steam electric or solar power plants which are 75 megawatts or larger in size. The plants can be gas-fired, combined-cycle units, nuclear units, or others that are fueled by more conventional means. Combustion turbine units can be permitted in conjunction with a certified facility, or as an addition via the modification process, but as a stand alone, this type of unit does not trigger the certification process.

DEP is the lead agency for coordinating the siting process. Plant certification may include the plant's directly associated facilities, which are necessary for the construction and operation, such as natural gas pipeline, rail lines, roadways, and electrical transmission lines. Final certification is issued by the siting board (Governor & Cabinet).

Section 18: Definitions: The bill amends several definitions s. 403.503, F.S., in order to broaden, delete and conform terms as used in this section. However, noteworthy are the amendments to two terms: 1) The revision to "electrical power plant" clarifies that associated facilities to be included in the definition of plant are those that are owned by the applicant. This gives the applicant the option to include associated facilities not owned by the applicant. 2) The revision to "completeness" is amended to incorporate the concept of "sufficiency". This change combines two review processes.

Section 19: Department of Environmental Protection; powers and duties: The bill broadens DEP powers and duties by expanding its rulemaking authority to include construction as a component to be included as it sets forth rules for environmental precautions in relation to power plants. DEP has the authority to issue final orders when there is no certification hearing, resulting in a significant saving in overall licensing time. DEP is also given the authority to issue emergency orders when emergency conditions require a short turn-around time. Other additional powers and duties include acting as clerk for the siting board as well as administering and managing the terms and conditions of the certification order, supporting documents and records for the life of the facility.

Section 20: Application for permits: The bill amends s. 403.5055, F.S., to provide that DEP include in its project analysis copies of proposed permits under federally delegated or approved permit programs. The bill modifies the section to require such inclusion only if the permit is available at the time DEP issues its project analysis.

Section 21: Applicability and certification: The bill amends s. 405.506, F.S., relating to applicability and certification to include "thresholds." The section is amended to exempt cogeneration facilities which are expanding by less than 35 megawatts. This will assist in the development and utilization of an additional resource. The term "maximum electrical generator rating" replaces the term "maximum normal generator nameplate rating" in order to more accurately reflect the term of art in the industry.

Section 22: Distribution of application: Section 403.5064, F.S., is amended to read "Application schedules" in lieu of "Distribution of application." The date of certification commencement shall begin when the applicant distributes the appropriate number of certification applications and submits the application fee pursuant to 403.518, F.S. This change in the date of commencement will result in a time savings of approximately 22 days because the distribution to the affected parties is done sooner.

A provision is added to provide that any amendment made prior to certification will be addressed as part of the original certification proceeding; however, the amendment may create a good cause of altering the time limits.

Further, this section provides that within 7 days after DEP files its proposed schedule, the administrative law judge (ALJ) will issue an order establishing a schedule for matters contained in the proposed schedule. The bill also clarifies notice provisions in order to reference the new notice section.

Section 23: Appointment of administrative law judge: This section is amended to clarify that the ALJ has all powers and duties granted pursuant to chapter 120, F.S., and by the laws and rules of DEP.

Section 24: Determination of completeness: The bill amends this section to give the applicant 30 days rather than 15 days to respond to a notice of incompleteness. A statement of completeness shall be filed with the Division of Administrative Hearings (DOAH), the applicant, and the parties, within 40 days in lieu of 15 days, after filing an application. The bill outlines the procedure for an applicant to follow when DEP declares an application incomplete.

Section 25: Informational public meetings: Section 403.50663, F.S., is created to establish that a local government or a regional planning council in whose jurisdiction the proposed plant exist may hold an information public meeting to inform the public about the proposed site and its associated facilities. The meeting must be noticed not less than 5 days prior to the date; however, the failure to hold an informational public meeting or the procedure used for the informational meeting are not grounds for the alteration of any time limitation or grounds to deny or condition certification.

Further, the bill clarifies that it is the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party other than the applicant and the department shall be required to attend such informational public meetings.

Section 26: Land use consistency: Section 403.50665, F.S., is created to generally streamline the land use determination, and to require that the applicant includes a description in the application of land use consistency with existing land use plans and zoning ordinances. If a local government makes an affirmative determination that the site and or facilities are consistent with local land use, but a substantially affected individual disputes the local government's determination, that person has 15 days to file a petition disputing the determination.

If it is determined by the local government that the proposed site, or directly associated facility, does conform with existing land use plans and zoning ordinances, in effect as of the date of the application, and no petition has been filed, the responsible zoning or planning authority shall not change the land use plans or zoning ordinances, in order to foreclose construction and operation of the proposed site, or directly associated facilities, unless certification is subsequently denied or withdrawn.

Section 27: Determination of Sufficiency: Section 403.5067, F.S., is repealed. This review is combined with the completeness review.

Section 28: Preliminary statement of issues, reports, project analyses, and studies: The bill amends s. 403.507, F.S., relating to preliminary statements of issues, reports, project analyses, and studies. It changes the date for the filing of preliminary statements of issues from 60 days after distribution of the application, to 40 days after the application has been determined complete. It now requires agency reports to be filed 100 days after the application has been determined complete, expediting the review process by approximately 32 days.

The bill also clarifies that the Department of Community Affairs shall address emergency management in its report, and water management district reports shall include issues related to impact on water resources, impact on regional water supply planning, and impact on district-owned lands and works.

The Department of Transportation (DOT) is added to the list of agencies that must address the impact of the proposed plant on matters within its jurisdiction. DOT is typically involved in the certification process, but its statutory addition as a reporting agency ties in with its addition to the list of parties to the proceeding. It also establishes DOT as an agency eligible for reimbursement from the application fee.

The bill deletes the provisions related to the PSC filing of its determination and relocates it to a separate section. Additionally, prior to DEP issuing its project analysis; the PSC must have made an affirmative determination of need. While the need determination is currently required prior to the certification hearing, this language is amended to provide for instances when a hearing may be canceled.

Section 29: Land use and certification hearings: The bill amends s. 403.508, F.S., relating to land use and certification hearings. The bill addresses both types of hearings:

(1) Land use hearing: provides that if a petition is filed for a land use hearing relating to the proposed site or directly associated facility the ALJ as expeditiously as possible, but no later than 30 days after DEP's receipt of the petition shall conduct the hearing. The land use hearing is to be held whether or not the application is complete. However, incompleteness of information may be used by the local government in making its determination on consistency with land use. If in the recommended order, the ALJ finds a site inconsistent with local land use and zoning requirements, the bill outlines the procedure that follows such situations. Additionally, it clarifies that local land use plans and zoning ordinances may be preempted by the siting board. The bill further readjusts processing time in order to conform to responses to determination of incompleteness. However, this does not impact the overall issuance of the final certification.

(2) Certification hearing: changes the date for the holding of the certification hearing to from 300 to 265 days after the filing of the application. The DEP analysis would have been filed approximately 95 days earlier. Moreover, according to DEP, this length of time is needed to account for the possibility of an application being incomplete as filed, but it was rendered complete before the deadline for the tolling of the time clock. This provision also provides adequate time to prepare for the hearing.

A key substantive change is the addition of a mechanism for the cancellation of the otherwise mandatory certification hearing. If there are no disputed issues of fact or law, no later than 29 days before the certification hearing, but with enough time to provide three days notice of canceling the hearing, DEP or the applicant may request that the certification hearing be canceled. The ALJ, upon request, can order cancellation of the hearing for a non-controversial project upon stipulation by all parties. The ALJ would relinquish jurisdiction, and DEP would prepare the Final Order. This new option would shorten the process by as much as four and a half months, and would save the applicant and the agencies expense.

The bill also makes numerous technical changes to this section, including the relocation of provisions to group related activities and improve the chronological sequencing of events. Additionally, DOT is added to the list of parties, and process deadlines are revised to conform to other deadline changes. The language regarding "public notice" has been relocated to a new notice section pertaining to the entire process, as opposed to just the hearing proceeding.

The bill also conforms existing provisions related to the conduct of the hearing, parties, and intervention, and retains existing provisions related to public participation and public hearings, though relevant dates are changed to conform to changes in the dates of the overall process.

Section 30: Final Disposition of the Application: The bill amends s. 403.509, F.S., relating to the final disposition of application. The bill adds a provision allowing DEP to issue the final order on certification, if the ALJ has cancelled the certification hearing. This would only apply if there are no controversial issues, and could save several months.

The bill requires the applicant to seek before, during or after, the certification any necessary land easements for state lands from the Board of Trustees or relevant water management district. The certification may be made contingent on the applicant receiving the appropriate interest.

This section also creates criteria for approval or denial of the application, which is drawn from the intent language, and criteria listed elsewhere in the act. In order to make the act internally consistent regarding federally delegated/approved permits, provisions related to these permits are deleted.

Section 31: Effect of Certification: The bill amends s. 403.511, F.S., relating to the effect of certification. The bill deletes language to conform to the provisions that allow the Secretary of DEP to sign certifications, under certain circumstances. Language is added to this section to clarify that local land use permits and zoning ordinances are preempted by the PPSA. This section further clarifies that federal permits are to be issued under their own program guidelines and not those of the Siting Board or PPSA. Subsection (8) is also added to this section and reads:

> (8) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.

Section 32: Filing of Notice of Certified Corridor Route: The bill creates s. 403.5112, F.S., relating to filing of notice of certified corridor route. This provision is drawn from s. 403.5312, F.S., contained in the Transmission Line Siting Act, but which technically applies to the PPSA, as well. This section provides that within 60 days after a directly associated linear facility is certified, the applicant must file notice of the certified route with DEP and the clerk of the circuit court in each county through which the corridor will pass.

The notice is to consist of maps and aerial photographs clearly showing the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. The clerk is to record the filing in the official record of the county for the duration of the certification, or until the applicant certifies to DEP and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within the county, whichever is sooner.

Section 33: Postcertification Amendments: The bill creates s. 403.5113, F.S., related to post-certification amendments. This is essentially a technical addition clarifying the difference in required actions between amendments submitted by the applicant during the application review, and those submitted after certification. These changes codify and clarify existing DEP rules, and provide regulatory certainty for licensees.

If subsequent to certification, a licensee proposes a material change to the certification, the licensee must submit to DEP a written request for amendment and a description of the proposed change to the application. DEP has 30 days to determine whether or not the proposed change requires the conditions of certification to be modified. If DEP concludes that the change would not require a modification of the conditions of certification, DEP must provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

If DEP concludes that the change would require a modification of the conditions of certification, DEP sends written notification to the licensee stating that the proposed changes require a request for modification.

Section 34: Public Notice; Costs of Proceeding: The bill amends s. 403.5115 F.S., relating to public notice. This language in this section conforms to requirements to other provisions, updates methods for notification to allow for notice as specified in ch. 120, F.S., and makes clarifications. The applicant is responsible for publishing and paying for the notices in newspapers of general circulation relating to its filings with DEP, hearings, the cancellation of hearings, modifications, and supplemental applications.

DEP is required to provide the notices in the manner specified by ch. 120, F.S., and provide copies to persons who have been placed on its mailing list pertaining to various filings and hearing, the cancellation of hearings and any notice of stipulations, proposed agency actions and petitions for modification.

Section 35: Review: The bill amends the judicial review provisions in s. 403.513, F.S. to conform its requirements to other provisions. The bill clarifies that when possible, separate appeals of the certification order and any DEP permit issued pursuant to a federally delegated or approved permit program may be consolidated for purposes of judicial review.

Section 36: Modification of Certification: Modifications of certification are frequently necessary, in part because a life-of-the-facility license was granted. However, not all changes at a certified facility necessitate a formal modification, rather, an approved amendment may suffice. A "modification" is any change in the certification order after issuance, including a change in the conditions of certification. For example, a condition might specify that the chemical treatment system for the facility only be allowed a 30 foot mixing zone, and if the applicant wishes to have a 40 foot mixing zone, a modification would be necessary. However, if a construction shed was to be moved and this was not mentioned in the conditions nor are there any foreseeable impacts, an amendment would be approved.

According to DEP, modifications can be approved by the Siting Board, but this authority is most frequently delegated to the Secretary of DEP. However, if a dispute arises, the decision-making authority reverts to the Siting Board.

The bill amends s. 403.516, F.S., relating to the modification of certification. This section makes edits to clarify and streamline unclear provisions related to modification of certifications. Additionally, it conforms requirements to other provisions regarding federally delegated or approved permits.

Section 37: Supplemental Applications for Sites Certified for Ultimate Site Capacity: The bill amends s. 403.517, F.S., relating to supplemental applications certified for ultimate site capacity. These applications are for certification of the construction of electrical power plants to be located at sites which have been previously certified for ultimate site capacity. Supplemental applications are limited to electrical power plants using a fuel type previously certified for the site.

This section is amended to add that these applications include all new directly associated facilities that support the construction and operation of the electrical power plant. The bill also simplifies and clarifies language regarding procedural steps for applications at facilities that have previously been certified, but are expanding. Additionally, the definition of "ultimate site capacity" was deleted and transferred to the definitions section.

Section 38: Existing Electrical Power Plant Site Certification: The bill amends s. 403.5175, F.S., relating to existing electrical power plant site certification to make technical edits conforming this section to other sections of the PPSA.

Section 39: Disposition of Fees: For the siting of a power plant, the applicant must pay DEP a $2,500 fee upon filing the notice of intent and a fee not to exceed $200,000 when filing the application. In addition, there are fees associated with a certification modification, a supplemental application, and an existing site certification. Generally, sixty percent of this fee goes to DEP for its costs associated with coordinating the review, acting on the application, and covering its associated costs. Twenty percent goes to DOAH to cover its costs associated with conducting the hearing. The remaining twenty-percent may be provided to various agencies to reimburse them for their costs associated with their participation in the proceeding.

The bill amends s. 403.518, F.S., relating to the disposition of fees to take into account the potential cancellation of the certification hearing. Currently, DOAH receives 20 percent of the application fee to cover its administrative costs. Under the new provisions, DOAH would receive 5 percent up front to cover

its initial administration costs. DOAH would receive an additional 5 percent if a land use hearing is held and an additional 10 percent if a certification hearing is held. If all hearings are held, DOAH will receive the 20 percent it currently receives. The bill adds a provision to allow agencies to seek reimbursement of their expenses if an application is held in abeyance for more than one year. In other words, a grandfathering exists for certain applications in the process, i.e. those requiring cancellation of certification.

DEP shall establish rules for determining a certification modification fee based on the equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated linear facility location.

Section 40: Applicability of Revisions: The bill provides that any applicant for power plant certification under the PPSA is to be processed under the law applicable when the application was filed, except that provisions relating to the cancellation of the certification hearing, the provisions related to the final disposition of the application and issuance of the written order by the secretary of DEP, and notice of the cancellation of the certification hearing may apply to any application for power plant certification. This will have the effect of leaving the existing time frame in place for any application which is pending when the bill becomes law.

Section 41: Exclusive Forum for Determination of Need: The need determination process can occur prior to the filing of a certification application, or afterwards; however, it is usually recommended that it be commenced beforehand. Need determination is a formal process required under s. 403.519, F.S., and is conducted by the PSC. The PSC reviews the need for the generation capacity which the proposed facility would produce in relation to the needs of the region, and to the state as a whole. The PSC also looks at whether the facility would be the most cost-effective means of obtaining generating capacity. If the PSC makes a negative determination, or recommends that an alternative approach is more suitable, then either the pending application need not be submitted, or should be revised. If the application has already been submitted, then the certification application process comes to a halt.

Section 403.519(2), F.S., requires the PSC to publish notices in the newspaper of its need determination hearing 45 days before the date set for the hearing. The bill shifts this responsibility to the applicant and shortens the time frame to 21 days before the hearing. In addition, it states that the PSC shall continue to post a notice in the Florida Administrative Weekly at least seven days prior to the date of the hearing.

The bill amends s. 403.519(3), F.S., allowing the PSC to take into account the need for fuel diversity and supply reliability when making a need determination. The PSC currently includes fuel issues in its need determination proceeding, but the bill requires it to be addressed in the PSC's deliberations. The bill does not specify if the need for fuel diversity and supply reliability refers to the state as a whole or to the specific applicant.

Section 42: Effective Date: This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1 Provides legislative findings and intent.

Section 2 Creates s. 377.801, F.S., provides Short title.

Section 3 Creates s. 377.802, F.S., provides purpose.

Section 4 Creates s. 377.803, F.S., provides definitions.

Section 5 Creates s. 377.804, F.S., Renewable Energy Technologies Grant Program.

Section 6 Creates s. 377.805, F.S., Energy-Efficient Appliances Rebate Program.

Section 7 Creates s. 377.806, F.S., Solar Energy Systems Rebate Program.

Section 8 Creates s. 377.901, F.S., Florida Energy Council.

Section 9 Creates s. 212.08(7)(ccc), F.S., sales tax exemption for equipment, machinery and other renewable energy technologies.

Section 10 Adds s. 213.053(7)(y), F.S., relating to confidentiality and information sharing.

Section 11 Amends s. 220.02(8), F.S., relating to tax credits against corporate income tax or franchise tax.

Section 12 Creates s. 220.192, F.S., Renewable energy technologies investment tax credit.

Section 13 Amends s. 220.13, F.S., relating to definition of "adjusted federal income."

Section 14 Amends s. 186.801(2), F.S., relating to ten-year site plan.

Section 15 Amends s. 366.04(6), F.S., relating to jurisdiction of the Public Service Commission.

Section 16 Amends s. 366.05(1) and (8), F.S., related to powers of the Public Service Commission

Section 17 Requires the Public Service Commission to direct a study.

Section 18 Amends s. 403.503, F.S., provides definitions for the Florida Electrical Power Plant Siting Act.

Section 19 Amends s. 403.504, F.S., relating to powers and duties of the Department of Environmental Protection.

Section 20 Amends s. 403.5505, F.S., relation to applications for permits pursuant to s. 403.0885, F.S. (Establishment of federally approved state National Pollutant Discharge Elimination System (NPDES) Program).

Section 21 Amends s. 403.506, F.S., relating to applicability, thresholds, and certification.

Section 22 Amends s. 403.5064, F.S., relating to distribution of certification application and related schedule.

Section 23 Amends s. 403.5065, F.S., relating to appointment, powers, and duties of an administrative law judge.

Section 24 Amends s. 403.5066, F.S., relating to determination of completeness.

Section 25 Creates s. 403.50663, F.S., relating to informational public meetings.

Section 26 Creates s. 403.50665, F.S., relating to land use consistency determination.

Section 27 Repeals s. 403.5067, F.S., determination of sufficiency.

Section 28 Amends s. 403.507, F.S., preliminary statement of issues, reports, project analyses, and studies.

Section 29 Amends s. 403.508, F.S., relating to land use and certification hearings.

Section 30 Amends s. 403.509, F.S, relating to final disposition of the application.

Section 31 Amends s. 403.511, F.S., relating to effect of certification.

Section 32 Creates s. 403.5112, F.S. relating to filing of notice of certified corridor route.

Section 33 Creates s. 403.5113, F.S., relating to post certification amendments.

Section 34 Amends s. 403.5115, F.S., relating to public notice and costs of proceeding.

Section 35 Amends s. 403.513, F.S., relating to judicial review.

Section 36 Amends s. 403.516, F.S., relating to modification of certification.

Section 37 Amends s. 403.517, F.S., relating to supplemental applications for sites certified for ultimate site capacity.

Section 38 Amends s. 403.5175, F.S., relating to electrical power plant site certifications

Section 39 Amends s. 403.518, F.S., relating to fees and disposition.

Section 40 Provides for the applicability of revisions to the Power Plant Siting Act

Section 41 Amends s. 403.519, F.S., relating to determination of need.

Section 42 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, the sales tax exemptions for renewable energy technologies, and the corporate income tax credits, will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	($11.0m)	($16.5m)
State Trust	(Insignificant)	(Insignificant)
Total	($11.0m)	($16.5m)

2. Expenditures:

Renewable Energy Technologies Grant Program
According to DEP, there will be recurring costs associated with administering the programs provided for under the act. At this time, the Energy Office staff time is paid through a grant from the United States Department of Energy and administering grant programs would be an allowable cost under the federal grant. However, the additional workload may create a need for hiring additional staff.

Solar Energy System Incentives Program
The fiscal impact of the Solar Energy System Incentives Program is indeterminate at this time. The availability of the rebates is subject to the amount appropriated to the program each fiscal year. DEP will incur some expenses associated with administering this program.

Florida Energy Council

The Energy Council may incur costs associated with conducting its duties, and DEP may incur administrative costs associated with staffing the council. There is no appropriation for these expenses.

Sales Tax Exemption and Corporate Income Tax Credit Administration
According to DEP, it will either administer the tax incentive program or contract with an outside organization to do so. The costs associated with this incentive are recurring in nature. The Energy Office staff is paid through a grant from the U.S. Department of Energy and administration of a tax incentive program for biofuels and hydrogen would be allowable under the federal grant. However, the additional workload may create a need for hiring additional staff.

According to DOR, it will need one additional position at a recurring cost of $48,708 to administer these programs. For the 2006-2007 fiscal year, DOR expects to incur $4,834 in non-recurring expenses.

Public Service Commission
According to PSC, it may see an increased workload as a result of the additional authority monitoring system reliability as it relates to fuel diversity. The PSC will also incur costs related to the study it is required to direct.

Power Plant Siting Act
For the siting of a power plant, an applicant must pay DEP a $2,500 fee upon filing the notice of intent, and a fee not to exceed $200,000 when filing the application. In addition, there are fees associated with a certification modification, a supplemental application, and an existing site certification. Generally, sixty percent of the fees are allocated to DEP to cover its review, the processing of the application, and other associated costs.

Twenty percent of the fees are allocated to DOAH to cover its administrative costs associated with conducting the hearing. However, under this bill, DOAH will receive 5 percent up front to cover its initial administration costs, an additional 5 percent if a land use hearing is held, and an additional 10 percent if a certification hearing is held. If all hearings are held, DOAH will be allocated the 20 percent it currently receives.

The remaining twenty percent may be provided to various agencies to reimburse them for their costs associated with their participation in a PPSA proceeding.

The bill adds a provision to allow agencies to seek reimbursement of their expenses if an application is held in abeyance for more than one year.

Other Costs

DEP and DOR will incur expenses associated with the rulemaking requirements. In addition, DEP and the PSC may incur expenses associated with revising their current rules to conform to the statutory changes.

DEP, DOR, and the PSC will also incur some costs implementing various portions of the bill and administering various programs. Among these costs are those that will be incurred by DOR to administer the Energy-Efficient Products Sales Tax Holiday. However, all of these costs are indeterminate at this time.

The cost of the grant program is limited to the amount appropriated each year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill relating to the Energy-Efficient Products Sales Tax Holiday, and the sales tax exemptions for renewable energy technologies will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	$ (0.2m)	$ (0.2m)
Local Gov't. Half Cent	(0.5m)	(0.5m)
Local Option	(0.5m)	(0.5m)
Total Local Impact	(1.2m)	(1.2m)

Local governments would be eligible to receive grants under the Renewable Energy Technologies Grant Program.

2. Expenditures:

In the long-run, local governments may save funds as a result of canceling the certification hearing under the PPSA; however, local governments may also incur expenses related to holding informational public meetings.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax exemptions and tax credits included in this bill will reduce the private sector's tax burden on certain items used for the production of renewable energy technologies.

Persons that purchase the solar energy items covered by this bill will benefit by receiving a rebate. Also, persons that purchase the items covered by this bill during Energy Efficiency Week may save money by not having to pay a sales tax. In addition, the solar rebates and the Energy-Efficient Products Sales Tax Holiday may prompt some consumers to purchase more of the eligible items, thereby causing an increase in the number of sales by Florida retailers.

Power plant siting applicants could realize a direct economic benefit from a streamlined permitting process, including the ability to begin construction at an earlier date.

D. FISCAL COMMENTS:

The bill does not contain an appropriation for the expenses related to the Florida Energy Council.

The bill does not provide an appropriation for DOR to administer the Energy-Efficient Products Sales Tax Holiday.

HB 5001, the General Appropriations Act, contains a $5 million General Revenue appropriation for the Solar Energy System Rebates Program. There is also an appropriation of $15 million ($8.6m in General Revenue and $6.4 in Trust) for Renewable Energy Technology Grants including $5 million (GR) for the Farm to Fuel program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant and an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority in the following instances:

DEP may adopt rules:

a. to administer the Renewable Energy Technologies Grant Program.
b. to designate rebate amounts and administer the issuance of Solar Energy Systems Incentive Program.
c. to implement provisions related to the Florida Energy Council.
d. to implement guidelines, rules, and application materials for the Renewable Energy Technologies Investment Tax Credit.
e. to ensure sales tax exemptions do not exceed the provided limits, regularly publish the amount of sales tax remaining in each fiscal year.
f. to determine the appropriate fee for a certificate modification under the Florida Electric Power Plant Siting Act.
g. to amend its power plant siting rules to conform to change to the Florida Electric Power Plant Siting Act.
h. to include "construction" as a component to be included in rules for environmental precautions in relation to the PPSA.

DOR is required to adopt rules regarding the manner and form of sales tax refund applications and may establish guidelines for an affirmative showing of qualification for exemptions. Also, DOR has the authority to adopt rules relating to forms required to claim the Renewable Energy Technologies Investment Tax Credit, the requirements and basis for establishing an entitlement to a credit, and examination and audit procedures required to administer the credit.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

On line 279, the bill provides that during the sales tax holiday, the tax levied under ch. 212, F.S., may not, be levied. This language is permissive. In order to provide that the tax cannot be levied, this language should be changed to shall not.

On lines 468 through 473, the bill provides a sales tax exemption for materials used in the distribution of ethanol from E10 to E85; however, the exemption for gasoline fueling station pump retrofits for ethanol applies from E10 through E100. This is a consistency concern.

Other Comments

The PSC may need rulemaking authority to amend some of its current rules to conform to provisions contained in this bill.

According to the PSC, the January 30, 2007 deadline to perform all the study components may be difficult to achieve. Even with the bill taking effect upon becoming law, the PSC will only have seven to eight months to perform the required study and get the report approved by the Commissioners. The PSC is currently working with the Florida Reliability Coordinating Council (FRCC) on a new transmission planning process, and this involvement may enhance the proposed study on Florida's electric transmission grid. The purpose of the new FRCC transmission planning process is to increase coordination among the FRCC members in an effort to improve the overall transmission planning and to provide a better transmission expansion plan from a statewide perspective. The utilities will file their first reports utilizing this new planning process in this month (April 2006). Additionally, the PSC has opened a docket proposing rules governing the placement of new electric distribution facilities underground and conversion of existing overhead distribution facilities to underground, to address the effects of extreme weather events.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Utilities & Telecommunications adopted a strike-all amendment and nine amendments to the strike-all. These amendments provided the following:

A) Renewable Energy and Energy Efficiency Act:

1. Amends definition of "renewable energy resource" to more clearly specify targeted resources.
2. Modifies grant program language to clarify criteria and DEP duties.
3. Removes the energy-efficient appliance rebate program and creates the new Energy-Efficient Products Sales Tax Holiday.
4. Revises language to incorporate concepts into the existing solar energy rebate program, including providing incentives for solar pool heaters, setting rebate amounts, establishing eligibility criteria, and setting rebate caps.

B) Florida Energy Council

1. Adds the Commissioner of Agriculture and Consumer Services to the membership of the council.
2. Adds that the Secretary of DEP, the Chair of the PSC, and the Commissioner of DACS may appoint a designee.
3. Adds that the Council's recommendations shall be guided by the principles of reliability, efficiency, affordability, and diversity.

C) Tax Incentives

1. Amends definitions of "Biodiesel" and "Ethanol" to reflect more accepted definitions of those terms, and revises related concepts to clarify what is eligible for tax incentives.
2. Makes technical corrections for proper operation of the tax programs.

D) Public Service Commission

1. Clarifies the PSC is to direct a broad study all forms of system hardening.

E) Power Plant Siting Act

1. Clarifies definitions.
2. Clarifies the interaction with federal permit programs.
3. Amends the applicability section to exempt cogeneration facilities which are expanding by less than 35 megawatts.
4. Changes the section on completeness to give the applicant 30 days, rather than 15, to respond to a notice of incompleteness. Other formatting changes were made to make this section clearer.
5. Streamlines the process on the determination of consistency with land use to ensure that the applicant files the necessary information, and that the local government's abilities in issuing a statement of inconsistency are protected.

CHAMBER ACTION

The Utilities & Telecommunications Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to energy; providing legislative findings and intent; creating s. 377.801, F.S.; creating the "Florida Renewable Energy Technologies and Energy Efficiency Act"; creating s. 377.802, F.S.; stating the purpose of the act; creating s. 377.803, F.S.; providing definitions; creating s. 377.804, F.S.; creating the Renewable Energy Technologies Grants Program; providing program requirements and procedures, including matching funds; creating s. 377.805, F.S.; establishing an energy-efficient products sales tax holiday; specifying a period during which the sale of energy-efficient products is exempt from certain tax; providing a limitation; providing a definition; creating s. 377.806, F.S.; creating the Solar Energy System Incentives Program; providing program requirements, procedures, and limitations; requiring the Department of Environmental Protection to adopt rules; creating s. 377.901, F.S.; creating the Florida Energy

Council within the Department of Environmental Protection; providing purpose and composition; providing for appointment of members and terms; providing for reimbursement for travel expenses and per diem; requiring the department to provide certain services to the council; providing rulemaking authority; amending s. 212.08, F.S.; providing definitions for the terms "biodiesel," "ethanol," and "hydrogen fuel cells"; providing tax exemptions in the form of a rebate for the sale or use of certain equipment, machinery, and other materials for renewable energy technologies; providing eligibility requirements and tax credit limits; directing the Department of Revenue to adopt rules; directing the Department of Environmental Protection to determine and publish certain information relating to such exemptions; providing for expiration of the exemption; amending s. 213.053, F.S.; authorizing the Department of Revenue to share certain information with the Department of Environmental Protection for specified purposes; amending s. 220.02, F.S.; providing the order of application of the renewable energy technologies investment tax credit; creating s. 220.192, F.S.; providing definitions; establishing a corporate tax credit for certain costs related to renewable energy technologies; providing eligibility requirements and credit limits; providing certain authority to the Department of Environmental Protection and the Department of Revenue; directing the Department of Environmental Protection to determine and

publish certain information; providing for expiration of the tax credit; amending s. 220.13, F.S.; providing an addition to the definition of "adjusted federal income"; amending s. 186.801, F.S.; revising the provisions of electric utility 10-year site plans to include the effect on fuel diversity; amending s. 366.04, F.S.; revising the safety standards for public utilities; amending s. 366.05, F.S.; authorizing the Public Service Commission to adopt certain construction standards and make certain determinations; directing the commission to conduct a study and provide a report by a certain date; amending s. 403.503, F.S.; revising and providing definitions applicable to the Florida Electrical Power Plant Siting Act; amending s. 403.504, F.S.; providing the Department of Environmental Protection with additional powers and duties relating to the Florida Electrical Power Plant Siting Act; amending s. 403.5055, F.S.; revising provisions for certain permits associated with applications for electrical power plant certification; amending s. 403.506, F.S.; revising provisions relating to applicability and certification of certain power plants; amending s. 403.5064, F.S.; revising provisions for distribution of applications and schedules relating to certification; amending s. 403.5065, F.S.; revising provisions relating to the appointment of administrative law judges and specifying their powers and duties; amending s. 403.5066, F.S.; revising provisions relating to the determination of completeness for certain

applications; creating s. 403.50663, F.S.; authorizing certain local governments and regional planning councils to hold an informational public meeting about a proposed electrical power plant or associated facilities; providing requirements and procedures therefor; creating s. 403.50665, F.S.; requiring local governments to file certain land use determinations; providing requirements and procedures therefor; repealing s. 403.5067, F.S., relating to the determination of sufficiency for certain applications; amending s. 403.507, F.S.; revising required preliminary statement provisions for affected agencies; requiring a report as a condition precedent to the project analysis and certification hearing; amending s. 403.508, F.S.; revising provisions relating to land use and certification hearings, including cancellation and responsibility for payment of expenses and costs; requiring certain notice; amending s. 403.509, F.S.; revising provisions relating to the final disposition of certain applications; providing requirements and provisions with respect thereto; amending s. 403.511, F.S.; revising provisions relating to the effect of certification for the construction and operation of proposed electrical power plants; providing that issuance of certification meets certain coastal zone consistency requirements; creating s. 403.5112, F.S.; requiring filing of notice for certified corridor routes; providing requirements and procedures with respect thereto; creating s. 403.5113, F.S.; authorizing postcertification

amendments for power plant site certification applications; providing requirements and procedures with respect thereto; amending s. 403.5115, F.S.; requiring certain public notice for activities relating to electrical power plant site application, certification, and land use determination; providing requirements and procedures with respect thereto; directing the Department of Environmental Protection to maintain certain lists and provide copies of certain publications; amending s. 403.513, F.S.; revising provisions for judicial review of appeals relating to electrical power plant site certification; amending s. 403.516, F.S.; revising provisions relating to modification of certification for electrical power plant sites; amending s. 403.517, F.S.; revising provisions relating to supplemental applications for sites certified for ultimate site capacity; amending s. 403.5175, F.S.; revising provisions relating to existing electrical power plant site certification; revising the procedure for reviewing and processing applications; requiring additional information to be included in certain applications; amending s. 403.518, F.S.; revising the allocation of proceeds from certain fees collected; providing for reimbursement of certain expenses; directing the Department of Environmental Protection to establish rules for determination of certain fees; eliminating certain operational license fees; providing for the application, processing, approval, and cancellation of electrical power plant certification;

amending s. 403.519, F.S.; directing the Public Service Commission to consider fuel diversity and reliability in certain determinations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Legislative findings and intent.--The Legislature finds that advancing the development of renewable energy technologies and energy efficiency is important for the state's future, its energy stability, and the protection of its citizens' public health and its environment. The Legislature finds that the development of renewable energy technologies and energy efficiency in the state will help to reduce demand for foreign fuels, promote energy diversity, enhance system reliability, reduce pollution, educate the public on the promise of renewable energy technologies, and promote economic growth. The Legislature finds that there is a need to assist in the development of market demand that will advance the commercialization and widespread application of renewable energy technologies. The Legislature further finds that the state is ideally positioned to stimulate economic development through such renewable energy technologies due to its ongoing and successful research and development track record in these areas, an abundance of natural and renewable energy sources, an ability to attract significant federal research and development funds, and the need to find and secure renewable energy technologies for the benefit of its citizens, visitors, and environment.

Section 2. Section 377.801, Florida Statutes, is created to read:

377.801 Short title.--Sections 377.801-377.806 may be cited as the "Florida Renewable Energy Technologies and Energy Efficiency Act."

Section 3. Section 377.802, Florida Statutes, is created to read:

377.802 Purpose.--This act is intended to provide matching grants to stimulate capital investment in the state and to enhance the market for and promote the statewide utilization of renewable energy technologies. The targeted grants program is designed to advance the already growing establishment of renewable energy technologies in the state and encourage the use of other incentives such as tax exemptions and regulatory certainty to attract additional renewable energy technology producers, developers, and users to the state. This act is also intended to provide incentives for the purchase of energy-efficient appliances and rebates for solar energy equipment installations for residential and commercial buildings.

Section 4. Section 377.803, Florida Statutes, is created to read:

377.803 Definitions.--As used in ss. 377.801-377.806, the term:

(1) "Act" means the Florida Renewable Energy Technologies and Energy Efficiency Act.

(2) "Approved metering equipment" means a device capable of measuring the energy output of a solar thermal system that has been approved by the commission.

(3) "Commission" means the Florida Public Service Commission.

(4) "Department" means the Department of Environmental Protection.

(5) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, or any other public or private entity.

(6) "Renewable energy" means electrical, mechanical, or thermal energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen, biomass, solar energy, geothermal energy, wind energy, ocean energy, waste heat, or hydroelectric power.

(7) "Renewable energy technology" means any technology that generates or utilizes a renewable energy resource.

(8) "Solar energy system" means equipment that provides for the collection and use of incident solar energy for water heating, space heating or cooling, or other applications that require a conventional source of energy such as petroleum products, natural gas, or electricity that performs primarily with solar energy. In other systems in which solar energy is used in a supplemental way, only those components that collect and transfer solar energy shall be included in this definition.

(9) "Solar photovoltaic system" means a device that converts incident sunlight into electrical current.

(10) "Solar thermal system" means a device that traps heat from incident sunlight in order to heat water.

Section 5. Section 377.804, Florida Statutes, is created to read:

377.804 Renewable Energy Technologies Grants Program.--

(1) The Renewable Energy Technologies Grants Program is established within the department to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies.

(2) Matching grants for renewable energy technology demonstration, commercialization, research, and development projects may be made to any of the following:

(a) Municipalities and county governments.

(b) Established for-profit companies licensed to do business in the state.

(c) Universities and colleges in the state.

(d) Utilities located and operating within the state.

(e) Not-for-profit organizations.

(f) Other qualified persons, as determined by the department.

(3) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to provide for application requirements, provide for ranking of applications, and administer the awarding of grants under this program.

(4) Factors the department shall consider in awarding grants include, but are not limited to:

(a) The availability of matching funds or other in-kind contributions applied to the total project from an applicant. The department shall give greater preference to projects that provide such matching funds or other in-kind contributions.

(b) The degree to which the project stimulates in-state capital investment and economic development in metropolitan and rural areas, including the creation of jobs and the future development of a commercial market for renewable energy technologies.

(c) The extent to which the proposed project has been demonstrated to be technically feasible based on pilot project demonstrations, laboratory testing, scientific modeling, or engineering or chemical theory that supports the proposal.

(d) The degree to which the project incorporates an innovative new technology or an innovative application of an existing technology.

(e) The degree to which a project generates thermal, mechanical, or electrical energy by means of a renewable energy resource that has substantial long-term production potential.

(f) The degree to which a project demonstrates efficient use of energy and material resources.

(g) The degree to which the project fosters overall understanding and appreciation of renewable energy technologies.

(h) The ability to administer a complete project.

(i) Project duration and timeline for expenditures.

(j) The geographic area in which the project is to be conducted in relation to other projects.

(k) The degree of public visibility and interaction.

(5) The department shall solicit the expertise of other state agencies in evaluating project proposals. State agencies shall cooperate with the Department of Environmental Protection and provide such assistance as required.

Section 6. Section 377.805, Florida Statutes, is created to read:

377.805 Energy-efficient products sales tax holiday.--The period from 12:01 a.m., October 5, through midnight, October 11, in each year from 2006 to 2009, shall be designated "Energy Efficiency Week," and the tax levied under chapter 212 may not be collected on the sale of an energy-efficient product having a selling price of $1,500 or less per product during that period. This exemption applies only when the energy-efficient product is purchased for noncommercial home or personal use and does not apply when the product is purchased for trade, business, or resale. As used in this subsection, the term "energy-efficient product" means a dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or florescent light bulb, dehumidifier, programmable thermostat, or refrigerator that has been designated by the United States Environmental Protection Agency and by the United States Department of Energy as meeting or exceeding each agency's requirements for energy efficiency or that has been designated as meeting or exceeding the requirements under the Energy Star Program of either agency.

Section 7. Section 377.806, Florida Statutes, is created to read:

377.806 Solar Energy System Incentives Program.--

(1) PURPOSE.--The Solar Energy System Incentives Program is established within the department to provide financial incentives for the purchase and installation of solar energy systems. Any resident of the state who purchases and installs a new solar energy system of 2 kilowatts or larger for a solar

photovoltaic system, a solar energy system that provides at least 50 percent of a building's hot water consumption for a solar thermal system, or a solar thermal pool heater, from July 1, 2006, through June 30, 2010, is eligible for a rebate on a portion of the purchase price of that solar energy system.

(2) SOLAR PHOTOVOLTAIC SYSTEM INCENTIVE.--

(a) Eligibility requirements.--A solar photovoltaic system qualifies for a rebate if:

1. The system is installed by a state-licensed master electrician, electrical contractor, or solar contractor.

2. The system complies with state interconnection standards as provided by the commission.

3. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts.--The rebate amount shall be set at $4 per watt based on the total wattage rating of the system. The maximum allowable rebate per solar photovoltaic system installation shall be as follows:

1. Twenty thousand dollars for a residence.

2. One hundred thousand dollars for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings.

(3) SOLAR THERMAL SYSTEM INCENTIVE.--

(a) Eligibility requirements.--A solar thermal system qualifies for a rebate if:

1. The system is installed by a state-licensed solar or plumbing contractor.

2. The system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amounts.--Authorized rebates for installation of solar thermal systems shall be as follows:

1. Five hundred dollars for a residence.

2. Fifteen dollars per 1,000 Btu for a maximum of $5,000 for a place of business, a publicly owned or operated facility, or a facility owned or operated by a private, not-for-profit organization, including condominiums or apartment buildings. Btu must be verified by approved metering equipment.

(4) SOLAR THERMAL POOL HEATER INCENTIVE.—-

(a) Eligibility requirements.--A solar thermal pool heater qualifies for a rebate if the system is installed by a state-licensed solar or plumbing contractor and the system complies with all applicable building codes as defined by the local jurisdictional authority.

(b) Rebate amount.--Authorized rebates for installation of solar thermal pool heaters shall be $100 per installation.

(5) APPLICATION.--Application for a rebate must be made within 90 days after the purchase of the solar energy equipment.

(6) REBATE AVAILABILITY.--The department shall determine and publish on a regular basis the amount of rebate funds remaining in each fiscal year. The total dollar amount of all rebates issued by the department is subject to the total amount of appropriations in any fiscal year for this program. If funds are insufficient during the current fiscal year, any requests for rebates received during that fiscal year may be processed during the following fiscal year. Requests for rebates received

in a fiscal year that are processed during the following fiscal year shall be given priority over requests for rebates received during the following fiscal year.

(7) RULES.--The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to develop rebate applications and administer the issuance of rebates.

Section 8. Section 377.901, Florida Statutes, is created to read:

377.901 Florida Energy Council.--

(1) The Florida Energy Council is created within the Department of Environmental Protection to provide advice and counsel to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the energy policy of the state. The council shall advise the state on current and projected energy issues, including, but not limited to, transportation, generation, transmission, distributed generation, fuel supply issues, emerging technologies, efficiency, and conservation. In developing its recommendations, the council shall be guided by the principles of reliability, efficiency, affordability, and diversity.

(2)(a) The council shall be comprised of a diversity of stakeholders and may include utility providers, alternative energy providers, researchers, environmental scientists, fuel suppliers, technology manufacturers, persons representing environmental, consumer, and public health interests, and others.

(b) The council shall consist of nine voting members as follows:

1. The Secretary of Environmental Protection, or his or her designee, who shall serve as chair of the council.

2. The chair of the Public Service Commission, or his or her designee, who shall serve as vice chair of the council.

3. One member shall be the Commissioner of Agriculture, or his or her designee.

4. Two members who shall be appointed by the Governor.

5. Two members who shall be appointed by the President of the Senate.

6. Two members who shall be appointed by the Speaker of the House of Representatives.

(c) All initial members shall be appointed prior to September 1, 2006. Appointments made by the Governor, the President of the Senate, and the Speaker of the House of Representatives shall be for terms of 2 years each. Members shall serve until their successors are appointed. Vacancies shall be filled in the manner of the original appointment for the remainder of the term that is vacated.

(d) Members shall serve without compensation but are entitled to reimbursement for travel expenses and per diem related to council duties and responsibilities pursuant to s. 112.061.

(3) The department shall provide primary staff support to the council and shall ensure that council meetings are electronically recorded. Such recording shall be preserved pursuant to chapters 119 and 257.

(4) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

Section 9. Paragraph (ccc) is added to subsection (7) of section 212.08, Florida Statutes, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and

shall pay the tax. The department may adopt rules to administer this subsection.

(ccc) Equipment, machinery, and other materials for renewable energy technologies.--

1. As used in this paragraph, the term:

a. "Biodiesel" means the mono-alkyl esters of long-chain fatty acids derived from plant or animal matter for use as a source of energy and meeting the specifications for biodiesel and biodiesel blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Biodiesel may refer to biodiesel blends designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

b. "Ethanol" means nominally anhydrous denatured alcohol produced by the fermentation of plant sugars meeting the specifications for fuel ethanol and fuel ethanol blends with petroleum products as adopted by the Department of Agriculture and Consumer Services. Ethanol may refer to fuel ethanol blends designated EXX, where XX represents the volume percentage of fuel ethanol in the blend.

c. "Hydrogen fuel cells" means equipment using hydrogen or a hydrogen-rich fuel in an electrochemical process to generate energy, electricity, or the transfer of heat.

2. The sale or use of the following in the state is exempt from the tax imposed by this chapter:

a. Hydrogen-powered vehicles, materials incorporated into hydrogen-powered vehicles, and hydrogen-fueling stations, up to a limit of $2 million in taxes each state fiscal year.

b. Commercial stationary hydrogen fuel cells, up to a limit of $1 million in taxes each state fiscal year.

c. Materials used in the distribution of biodiesel (B10-B100) and ethanol (E10-E85), including fueling infrastructure, transportation, and storage, up to a limit of $1 million in taxes each state fiscal year. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify for the exemption provided in this sub-subparagraph.

3. The Department of Environmental Protection shall provide to the department a list of items eligible for the exemption provided in this paragraph.

4.a. The exemption provided in this paragraph shall be available to a purchaser only through a refund of previously paid taxes.

b. To be eligible to receive the exemption provided in this paragraph, a purchaser shall file an application with the Department of Environmental Protection. The application shall be developed by the Department of Environmental Protection, in consultation with the department, and shall require:

(I) The name and address of the person claiming the refund.

(II) A specific description of the purchase for which a refund is sought, including, when applicable, a serial number or other permanent identification number.

(III) The sales invoice or other proof of purchase showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the property was purchased.

(IV) A sworn statement that the information provided is accurate and that the requirements of this paragraph have been met.

c. Within 30 days after receipt of an application, the Department of Environmental Protection shall review the application and shall notify the applicant of any deficiencies. Upon receipt of a completed application, the Department of Environmental Protection shall evaluate the application for exemption and issue a written certification that the applicant is eligible for a refund or issue a written denial of such certification within 60 days after receipt of the application. The Department of Environmental Protection shall provide the department with a copy of each certification issued upon approval of an application.

d. Each certified applicant shall be responsible for forwarding a certified copy of the application and copies of all required documentation to the department within 6 months after certification by the Department of Environmental Protection.

e. The provisions of s. 212.095 do not apply to any refund application made pursuant to this paragraph. A refund approved pursuant to this paragraph shall be made within 30 days after formal approval by the department.

f. The department shall adopt rules governing the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of qualification for exemption under this paragraph.

g. The Department of Environmental Protection shall be responsible for ensuring that the exemptions do not exceed the limits provided in subparagraph 2.

5. The Department of Environmental Protection shall determine and publish on a regular basis the amount of sales tax funds remaining in each fiscal year.

6. This paragraph expires July 1, 2010.

Section 10. Paragraph (y) is added to subsection (7) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.--

(7) Notwithstanding any other provision of this section, the department may provide:

(y) Information relative to ss. 212.08(7)(ccc) and 220.192 to the Department of Environmental Protection for use in the conduct of its official business.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 11. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.--

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be

applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, ~~and~~ those enumerated in s. 220.187, and those enumerated in s. 220.192.

Section 12. Section 220.192, Florida Statutes, is created to read:

220.192 Renewable energy technologies investment tax credit.--

(1) DEFINITIONS.--For purposes of this section, the term:

(a) "Biodiesel" means biodiesel as defined in s. 212.08(7)(ccc).

(b) "Eligible costs" means:

1. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $3 million per state fiscal year for all taxpayers, in connection with an investment in hydrogen-powered vehicles and hydrogen vehicle fueling stations in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

2. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $1.5 million per state fiscal year for all taxpayers, and

limited to a maximum of $12,000 per fuel cell, in connection with an investment in commercial stationary hydrogen fuel cells in the state, including, but not limited to, the costs of constructing, installing, and equipping such technologies in the state.

3. Seventy-five percent of all capital costs, operation and maintenance costs, and research and development costs incurred between July 1, 2006, and June 30, 2010, up to a limit of $6.5 million per state fiscal year for all taxpayers, in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100) and ethanol (E10-E100) in the state, including the costs of constructing, installing, and equipping such technologies in the state. Gasoline fueling station pump retrofits for ethanol (E10-E100) distribution qualify as an eligible cost under this subparagraph.

(c) "Ethanol" means ethanol as defined in s. 212.08(7)(ccc).

(d) "Hydrogen fuel cell" means hydrogen fuel cell as defined in s. 212.08(7)(ccc).

(2) TAX CREDIT.--For tax years beginning on or after January 1, 2007, a credit against the tax imposed by this chapter shall be granted in an amount equal to the eligible costs. Credits may be used in tax years beginning January 1, 2007, and ending December 31, 2010, after which the credit shall expire. If the credit is not fully used in any one tax year because of insufficient tax liability on the part of the corporation, the unused amount may be carried forward and used in tax years beginning January 1, 2007, and ending December 31,

2012, after which the credit carryover expires and may not be used. A taxpayer that files a consolidated return in this state as a member of an affiliated group under s. 220.131(1) may be allowed the credit on a consolidated return basis up to the amount of tax imposed upon the consolidated group. Any eligible cost for which a credit is claimed and which is deducted or otherwise reduces federal taxable income shall be added back in computing adjusted federal income under s. 220.13.

(3) APPLICATION PROCESS.--Any corporation wishing to obtain tax credits available under this section must submit to the Department of Environmental Protection an application for tax credit that includes a complete description of all eligible costs for which the corporation is seeking a credit and a description of the total amount of credits sought. The Department of Environmental Protection shall make a determination on the eligibility of the applicant for the credits sought and certify the determination to the applicant and the Department of Revenue. The corporation must attach the Department of Environmental Protection's certification to the tax return on which the credit is claimed. The Department of Environmental Protection shall be responsible for ensuring that the corporate income tax credits granted in each fiscal year do not exceed the limits provided for in this section. The Department of Environmental Protection is authorized to adopt the necessary rules, guidelines, and application materials for the application process.

(4) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.--

(a) In addition to its existing audit and investigation authority, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax credit applicant, that are necessary to verify the eligible costs included in the tax credit return and to ensure compliance with this section. The Department of Environmental Protection shall provide technical assistance when requested by the Department of Revenue on any technical audits or examinations performed pursuant to this section.

(b) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as a result of either an audit or examination or from information received from the Department of Environmental Protection, that a taxpayer received tax credits pursuant to this section to which the taxpayer was not entitled. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue, and such funds shall be paid into the General Revenue Fund of the state.

(c) The Department of Environmental Protection may revoke or modify any written decision granting eligibility for tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits under this section. The Department of Environmental Protection shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted tax credits.

Additionally, the taxpayer must notify the Department of Revenue of any change in its tax credit claimed.

(d) The taxpayer shall file with the Department of Revenue an amended return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax and interest within 60 days after the taxpayer receives notification from the Department of Environmental Protection that previously approved tax credits have been revoked or modified. If the revocation or modification order is contested, the taxpayer shall file an amended return or other report as provided in this paragraph within 60 days after a final order is issued following proceedings.

(e) A notice of deficiency may be issued by the Department of Revenue at any time within 3 years after the taxpayer receives formal notification from the Department of Environmental Protection that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any changes to its tax credit claimed, a notice of deficiency may be issued at any time.

(5) RULES.--The Department of Revenue shall have the authority to adopt rules relating to the forms required to claim a tax credit under this section, the requirements and basis for establishing an entitlement to a credit, and the examination and audit procedures required to administer this section.

(6) PUBLICATION.--The Department of Environmental Protection shall determine and publish on a regular basis the amount of available tax credits remaining in each fiscal year.

Section 13. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.--

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.--There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. The provisions of this subparagraph shall expire and be void on June 30, 2005.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. The provisions of this subparagraph shall expire and be void on June 30, 2005.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

12. The amount taken as a credit for the taxable year under s. 220.192.

Section 14. Subsection (2) of section 186.801, Florida Statutes, is amended to read:

186.801 Ten-year site plans.--

(2) Within 9 months after the receipt of the proposed plan, the commission shall make a preliminary study of such plan and classify it as "suitable" or "unsuitable." The commission may suggest alternatives to the plan. All findings of the commission shall be made available to the Department of Environmental Protection for its consideration at any subsequent electrical power plant site certification proceedings. It is recognized that 10-year site plans submitted by an electric utility are tentative information for planning purposes only and may be amended at any time at the discretion of the utility upon written notification to the commission. A complete application for certification of an electrical power plant site under chapter 403, when such site is not designated in the current 10-year site plan of the applicant, shall constitute an amendment to the 10-year site plan. In its preliminary study of each 10-year site plan, the commission shall consider such plan as a planning document and shall review:

(a) The need, including the need as determined by the commission, for electrical power in the area to be served.

(b) The effect on fuel diversity within the state.

(c) ~~(b)~~ The anticipated environmental impact of each proposed electrical power plant site.

(d) ~~(c)~~ Possible alternatives to the proposed plan.

(e) ~~(d)~~ The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of salt water or fresh water for cooling purposes.

(f) ~~(e)~~ The extent to which the plan is consistent with the state comprehensive plan.

(g) ~~(f)~~ The plan with respect to the information of the state on energy availability and consumption.

Section 15. Subsection (6) of section 366.04, Florida Statutes, is amended to read:

366.04 Jurisdiction of commission.--

(6) The commission shall further have exclusive jurisdiction to prescribe and enforce safety standards for transmission and distribution facilities of all public electric utilities, cooperatives organized under the Rural Electric Cooperative Law, and electric utilities owned and operated by municipalities. In adopting safety standards, the commission shall, at a minimum:

(a) Adopt the 1984 edition of the National Electrical Safety Code (ANSI C2) as initial standards; and

(b) Adopt, after review, any new edition of the National Electrical Safety Code (ANSI C2).

The standards prescribed by the current 1984 edition of the National Electrical Safety Code (ANSI C2) shall constitute acceptable and adequate requirements for the protection of the safety of the public, and compliance with the minimum

requirements of that code shall constitute good engineering practice by the utilities. The administrative authority referred to in the 1984 edition of the National Electrical Safety Code is the commission. However, nothing herein shall be construed as superseding, repealing, or amending the provisions of s. 403.523(1) and (10).

Section 16. Subsections (1) and (8) of section 366.05, Florida Statutes, are amended to read:

366.05 Powers.--

(1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, <u>including the ability to adopt construction standards that exceed the National Electrical Safety Code for purposes of ensuring the reliable provision of service,</u> and service rules and regulations to be observed by each public utility; to require repairs, improvements, additions, <u>replacements,</u> and extensions to the plant and equipment of any public utility when reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter; and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry,

including inadequacies in fuel diversity or fuel supply reliability, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the electric utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to ensure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518.

Section 17. The Florida Public Service Commission shall direct a study of the electric transmission grid in the state. The study shall look at electric system reliability to examine the efficiency and reliability of power transfer and emergency contingency conditions. In addition, the study shall examine the strengthening of infrastructure to address issues arising from the 2004 and 2005 hurricane seasons. A report of the results of the study shall be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 30, 2007.

Section 18. Subsections (5), (8), (9), (12), (18), (24), and (27) of section 403.503, Florida Statutes, are amended,

subsections (16) through (28) are renumbered as (17) through (29), respectively, and a new subsection (16) is added to that section, to read:

403.503 Definitions relating to Florida Electrical Power Plant Siting Act.--As used in this act:

(5) "Application" means the documents required by the department to be filed to initiate a certification review and evaluation, including the initial document filing, amendments, and responses to requests from the department for additional data and information ~~proceeding and shall include the documents necessary for the department to render a decision on any permit required pursuant to any federally delegated or approved permit program~~.

(8) "Completeness" means that the application has addressed all applicable sections of the prescribed application format, and ~~but does not mean~~ that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.

(9) "Corridor" means the proposed area within which an associated linear facility right-of-way is to be located. The width of the corridor proposed for certification as an associated facility, at the option of the applicant, may be the width of the right-of-way or a wider boundary, not to exceed a width of 1 mile. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the

right-of-way have been acquired by the licensee ~~applicant~~, the boundaries of the area certified shall narrow to only that land within the boundaries of the right-of-way.

(12) "Electrical power plant" means, for the purpose of certification, any steam or solar electrical generating facility using any process or fuel, including nuclear materials, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility elects to apply for certification under this act, or any unit capacity expansion of 35 megawatts or less of an existing exothermic reaction cogeneration unit that was originally built under a power plant siting act exemption. This exemption does not apply if the unit uses oil or natural gas for purposes other than startup. This term ~~and~~ includes associated facilities to be owned by the licensee which directly support the construction and operation of the electrical power plant such as fuel unloading facilities, pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities, water or wastewater transport pipelines, construction, maintenance and access roads, railway lines necessary for transport of construction equipment or fuel for the operation of the facility, and those associated transmission lines owned by the licensee which connect the electrical power plant to an existing transmission network or rights-of-way to which the applicant intends to connect~~, except that this term does not include any steam or solar electrical generating facility of less than 75 megawatts in capacity unless the applicant for such a facility~~

~~elects to apply for certification under this act~~. Associated facilities ~~An associated transmission line~~ may include, at the applicant's option, offsite associated facilities that will not be owned by the applicant and any proposed terminal or intermediate substations or substation expansions connected to the associated transmission line.

(16) "Licensee" means an applicant that has obtained a certification order for the subject project.

(19) ~~(18)~~ "Nonprocedural requirements of agencies" means any agency's regulatory requirements established by statute, rule, ordinance, zoning ordinance, land development code, or comprehensive plan, excluding any provisions prescribing forms, fees, procedures, or time limits for the review or processing of information submitted to demonstrate compliance with such regulatory requirements.

(25) ~~(24)~~ "Right-of-way" means land necessary for the construction and maintenance of a connected associated linear facility, such as a railroad line, pipeline, or transmission line as owned by or proposed to be certified by the applicant. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant subsequent to certification in documents filed with the department prior to construction.

(28) ~~(27)~~ "Ultimate site capacity" means the maximum generating capacity for a site as certified by the board. ~~"Sufficiency" means that the application is not only complete but that all sections are sufficient in the comprehensiveness of~~

~~data or in the quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by s. 403.507.~~

Section 19. Subsections (1), (7), (9), and (10) of section 403.504, Florida Statutes, are amended, and new subsections (9), (10), (11), and (12) are added to that section, to read:

403.504 Department of Environmental Protection; powers and duties enumerated.--The department shall have the following powers and duties in relation to this act:

(1) To adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this act, including rules setting forth environmental precautions to be followed in relation to the location, construction, and operation of electrical power plants.

(7) To conduct studies and prepare a project ~~written~~ analysis under s. 403.507.

(9) To issue final orders after receipt of the administrative law judge's order relinquishing jurisdiction pursuant to s. 403.508(6).

(10) To act as clerk for the siting board.

(11) To administer and manage the terms and conditions of the certification order and supporting documents and records for the life of the facility.

(12) To issue emergency orders on behalf of the board for facilities licensed under this act.

~~(9) To notify all affected agencies of the filing of a notice of intent within 15 days after receipt of the notice.~~

~~(10) To issue, with the electrical power plant certification, any license required pursuant to any federally delegated or approved permit program.~~

Section 20. Section 403.5055, Florida Statutes, is amended to read:

403.5055 Application for permits pursuant to s. 403.0885.--In processing applications for permits pursuant to s. 403.0885 that are associated with applications for electrical power plant certification:

(1) The procedural requirements set forth in 40 C.F.R. s. 123.25, including public notice, public comments, and public hearings, shall be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures for NPDES permit issuance, the applicable federal requirements shall control.

~~(2) The department's proposed action pursuant to 40 C.F.R. s. 124.6, including any draft NPDES permit (containing the information required under 40 C.F.R. s. 124.6(d)), shall within 130 days after the submittal of a complete application be publicly noticed and transmitted to the United States Environmental Protection Agency for its review pursuant to 33 U.S.C. s. 1342(d).~~

(2)~~(3)~~ If available at the time the department issues its project analysis pursuant to s. 403.507(5), the department shall include in its project analysis ~~written analysis pursuant to s. 403.507(3)~~ copies of the department's proposed action pursuant to 40 C.F.R. s. 124.6 on any application for a NPDES permit; any

corresponding comments received from the United States Environmental Protection Agency, the applicant, or the general public; and the department's response to those comments.

(3) ~~(4)~~ The department shall not issue or deny the permit pursuant to s. 403.0885 in advance of the issuance of the electrical ~~electric~~ power plant certification under this part unless required to do so by the provisions of federal law. When possible, any hearing on a permit issued pursuant to s. 403.0885 shall be conducted in conjunction with the certification hearing held pursuant to this act. The department's actions on an NPDES permit shall be based on the record and recommended order of the certification hearing, if the hearing on the NPDES was conducted in conjunction with the certification hearing, and of any other proceeding held in connection with the application for an NPDES permit, timely public comments received with respect to the application, and the provisions of federal law. The department's action on an NPDES permit, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved state NPDES program. Nothing in this part shall be construed to authorize the issuance of a state NPDES permit which does not conform to the requirements of the federally approved state NPDES program. ~~The permit, if issued, shall be valid for no more than 5 years.~~

~~(5) The department's action on an NPDES permit renewal, if issued, shall differ from the actions taken by the siting board regarding the certification order if federal laws and regulations require different action to be taken to ensure compliance with the Clean Water Act, as amended, and implementing regulations.~~

Section 21. Section 403.506, Florida Statutes, is amended to read:

403.506 Applicability, thresholds, and certification.--

(1) The provisions of this act shall apply to any electrical power plant as defined herein, except that the provisions of this act shall not apply to any electrical power plant or steam generating plant of less than 75 megawatts in capacity or to any substation to be constructed as part of an associated transmission line unless the applicant has elected to apply for certification of such plant or substation under this act. The provisions of this act shall not apply to any unit capacity expansion of 35 megawatts or less of an existing exothermic reaction cogeneration unit that was exempt from this act when it was originally built; however, this exemption shall not apply if the unit uses oil or natural gas for purposes other than unit startup. No construction of any new electrical power plant or expansion in steam generating capacity as measured by an increase in the maximum electrical generator rating of any existing electrical power plant may be undertaken after October 1, 1973, without first obtaining certification in the manner as herein provided, except that this act shall not apply to any such electrical power plant which is presently operating or

under construction or which has, upon the effective date of chapter 73-33, Laws of Florida, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nonnuclear fuels, internal related hardware, including increases in steam turbine efficiency, or operating conditions not in conflict with certification which increase the electrical output of a unit to no greater capacity than the maximum electrical generator rating ~~operating capacity~~ of the existing generator shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

~~(3) The application for any related department license which is required pursuant to any federally delegated or approved permit program shall be processed within the time periods allowed by this act, in lieu of those specified in s. 120.60. However, permits issued pursuant to s. 403.0885 shall be processed in accordance with 40 C.F.R. part 123.~~

Section 22. Section 403.5064, Florida Statutes, is amended to read:

403.5064 Application ~~Distribution of application~~; schedules.--

(1) The formal date of filing of a certification application and commencement of the certification review process shall be when the applicant submits:

(a) Copies of the certification application in a quantity and format as prescribed by rule to the department and other agencies identified in s. 403.507(2)(a).

(b) The application fee specified under s. 403.518 to the department.

(2)~~(1)~~ Within 7 days after the filing of an application, the department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of any additional ~~those affected or other~~ agencies or persons entitled to notice and copies of the application and any amendments. Copies of the application shall be distributed within 5 days after the provision of such names and addresses by the applicant to these additional agencies. This distribution shall not be a basis for altering the schedule of dates for the certification process.

(3) Any amendment to the application made prior to certification shall be disposed of as part of the original certification proceeding. Amendment of the application may be considered good cause for alteration of time limits pursuant to s. 403.5095.

(4)~~(2)~~ Within 7 days after the filing of an application ~~completeness has been determined~~, the department shall prepare a proposed schedule of dates for determination of completeness, submission of statements of issues, ~~determination of sufficiency, and~~ submittal of final reports, ~~from affected and other agencies~~ and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to s. 403.508(3)~~(4)~~. This

schedule shall be timely provided by the department to the applicant, the administrative law judge, all agencies identified pursuant to subsection (2) ~~(1)~~, and all parties. Within 7 days after the filing of the proposed schedule, the administrative law judge shall issue an order establishing a schedule for the matters addressed in the department's proposed schedule and other appropriate matters, if any.

(5) ~~(3) Within 7 days after completeness has been determined, the applicant shall distribute copies of the application to all agencies identified by the department pursuant to subsection (1).~~ Copies of changes and amendments to the application shall be timely distributed by the applicant to all ~~affected~~ agencies and parties who have received a copy of the application.

(6) Notice of the filing of the application shall be published in accordance with the requirements of s. 403.5115.

Section 23. Section 403.5065, Florida Statutes, is amended to read:

403.5065 Appointment of administrative law judge; powers and duties.--

(1) Within 7 days after receipt of an application, ~~whether complete or not,~~ the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by this act. The division director shall designate an administrative law judge within 7 days after receipt of the request from the department. In designating an administrative law judge for this purpose, the division director shall, whenever practicable, assign an

administrative law judge who has had prior experience or training in electrical power plant site certification proceedings. Upon being advised that an administrative law judge has been appointed, the department shall immediately file a copy of the application and all supporting documents with the designated administrative law judge, who shall docket the application.

(2) The administrative law judge shall have all powers and duties granted to administrative law judges by chapter 120 and by the laws and rules of the department.

Section 24. Section 403.5066, Florida Statutes, is amended to read:

403.5066 Determination of completeness.--

(1)(a) Within 30 days after the filing of an application, affected agencies shall file a statement with the department containing each agency's recommendations on the completeness of the application.

(b) Within 40 ~~15~~ days after the filing ~~receipt~~ of an application, the department shall file a statement with the Division of Administrative Hearings, ~~and~~ with the applicant, and with all parties declaring its position with regard to the completeness~~, not the sufficiency,~~ of the application. The department's statement shall be based upon consultation with the affected agencies.

(2) ~~(1)~~ If the department declares the application to be incomplete, the applicant, within 15 days after the filing of the statement by the department, shall file with the Division of

Administrative Hearings, ~~and~~ with the department, and all parties ~~a statement~~:

(a) A withdrawal of ~~Agreeing with the statement of the department and withdrawing~~ the application;

(b) A statement agreeing to supply the additional information necessary to make the application complete. Such additional information shall be provided within 30 days after the issuance of the department's statement on completeness of the application. The time schedules under this act shall not be tolled if the applicant makes the application complete within 30 days after the issuance of the department's statement on completeness of the application. A subsequent finding by the department that the application remains incomplete, based upon the additional information submitted by the applicant or upon the failure of the applicant to timely submit the additional information, tolls the time schedules under this act until the application is determined complete; ~~Agreeing with the statement of the department and agreeing to amend the application without withdrawing it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete; or~~

(c) A statement contesting the department's determination of incompleteness; or ~~contesting the statement of the department.~~

(d) A statement agreeing with the department and requesting additional time beyond 30 days to provide the information necessary to make the application complete. If the

applicant exercises this option, the time schedules under this act are tolled until the application is determined complete.

(3)(a) ~~(2)~~ If the applicant contests the determination by the department that an application is incomplete, the administrative law judge shall schedule a hearing on the statement of completeness. The hearing shall be held as expeditiously as possible, but not later than 21 ~~30~~ days after the filing of the statement by the department. The administrative law judge shall render a decision within 7 ~~10~~ days after the hearing.

(b) Parties to a hearing on the issue of completeness shall include the applicant, the department, and any agency that has jurisdiction over the matter in dispute.

(c) ~~(a)~~ If the administrative law judge determines that the application was not complete ~~as filed~~, the applicant shall withdraw the application or make such additional submittals as necessary to complete it. The time schedules referencing a complete application under this act shall not commence until the application is determined complete.

(d) ~~(b)~~ If the administrative law judge determines that the application was complete at the time it was declared incomplete ~~filed~~, the time schedules referencing a complete application under this act shall commence upon such determination.

(4) If the applicant provides additional information to address the issues identified in the determination of incompleteness, each affected agency may submit to the department, no later than 15 days after the applicant files the additional information, a recommendation on whether the agency

believes the application is complete. Within 22 days after receipt of the additional information from the applicant submitted under paragraph (2)(b), paragraph (2)(d), or paragraph (3)(c), the department shall determine whether the additional information supplied by an applicant makes the application complete. If the department finds that the application is still incomplete, the applicant may exercise any of the options specified in subsection (2) as often as is necessary to resolve the dispute.

Section 25. Section 403.50663, Florida Statutes, is created to read:

403.50663 Informational public meetings.--

(1) A local government within whose jurisdiction the power plant is proposed to be sited may hold one informational public meeting in addition to the hearings specifically authorized by this act on any matter associated with the electrical power plant proceeding. Such informational public meetings shall be held by the local government or by the regional planning council if the local government does not hold such meeting within 70 days after the filing of the application. The purpose of an informational public meeting is for the local government or regional planning council to further inform the public about the proposed electrical power plant or associated facilities, obtain comments from the public, and formulate its recommendation with respect to the proposed electrical power plant.

(2) Informational public meetings shall be held solely at the option of each local government or regional planning council if a public meeting is not held by the local government. It is

the legislative intent that local governments or regional planning councils attempt to hold such public meetings. Parties to the proceedings under this act shall be encouraged to attend; however, no party other than the applicant and the department shall be required to attend such informational public meetings.

(3) A local government or regional planning council that intends to conduct an informational public meeting must provide notice of the meeting to all parties not less than 5 days prior to the meeting.

(4) The failure to hold an informational public meeting or the procedure used for the informational public meeting are not grounds for the alteration of any time limitation in this act under s. 403.5095 or grounds to deny or condition certification.

Section 26. Section 403.50665, Florida Statutes, is created to read:

403.50665 Land use consistency.--

(1) The applicant shall include in the application a statement on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances that were in effect on the date the application was filed and a full description of such consistency.

(2) Within 80 days after the filing of the application, each local government shall file a determination with the department, the applicant, the administrative law judge, and all parties on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances that were in effect on the date the application was filed, based on the information provided in the application. The

applicant shall publish notice of the consistency determination in accordance with the requirements of s. 403.5115.

(3) If any substantially affected person wishes to dispute the local government's determination, he or she shall file a petition with the department within 15 days after the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1) shall apply.

(4) The dates in this section may be altered upon agreement between the applicant, the local government, and the department pursuant to s. 403.5095.

(5) If it is determined by the local government that the proposed site or directly associated facility does conform with existing land use plans and zoning ordinances in effect as of the date of the application and no petition has been filed, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

Section 27. Section 403.5067, Florida Statutes, is repealed.

Section 28. Section 403.507, Florida Statutes, is amended to read:

403.507 Preliminary statements of issues, reports, project analyses, and studies.--

(1) Each affected agency identified in paragraph (2)(a) shall submit a preliminary statement of issues to the

department, ~~and~~ the applicant, and all parties no later than 40 ~~60~~ days after the certification application has been determined ~~distribution of the~~ complete ~~application~~. The failure to raise an issue in this statement shall not preclude the issue from being raised in the agency's report.

(2)(a) No later than 100 days after the certification application has been determined complete, the following agencies shall prepare reports as provided below and shall submit them to the department and the applicant ~~within 150 days after distribution of the complete application~~:

1. The Department of Community Affairs shall prepare a report containing recommendations which address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable portions of the state comprehensive plan, emergency management requirements, and other such matters within its jurisdiction. The Department of Community Affairs may also comment on the consistency of the proposed electrical power plant with applicable strategic regional policy plans or local comprehensive plans and land development regulations.

~~2. The Public Service Commission shall prepare a report as to the present and future need for the electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.~~

2.~~3.~~ The water management district shall prepare a report as to matters within its jurisdiction, including but not limited

to, the impact of the proposed electrical power plant on water resources, regional water supply planning, and district-owned lands and works.

3.~~4.~~ Each local government in whose jurisdiction the proposed electrical power plant is to be located shall prepare a report as to the consistency of the proposed electrical power plant with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed electrical power plant, including ~~adopted local comprehensive plans, land development regulations, and~~ any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means.

4.~~5.~~ The Fish and Wildlife Conservation Commission shall prepare a report as to matters within its jurisdiction.

5.~~6.~~ Each ~~The~~ regional planning council shall prepare a report containing recommendations that address the impact upon the public of the proposed electrical power plant, based on the degree to which the electrical power plant is consistent with the applicable provisions of the strategic regional policy plan adopted pursuant to chapter 186 and other matters within its jurisdiction.

6. The Department of Transportation shall address the impact of the proposed electrical power plant on matters within its jurisdiction.

(b)~~7.~~ Any other agency, if requested by the department, shall also perform studies or prepare reports as to matters within that agency's jurisdiction which may potentially be affected by the proposed electrical power plant.

~~(b) As needed to verify or supplement the studies made by the applicant in support of the application, it shall be the duty of the department to conduct, or contract for, studies of the proposed electrical power plant and site, including, but not limited to, the following, which shall be completed no later than 210 days after the complete application is filed with the department:~~

~~1. Cooling system requirements.~~

~~2. Construction and operational safeguards.~~

~~3. Proximity to transportation systems.~~

~~4. Soil and foundation conditions.~~

~~5. Impact on suitable present and projected water supplies for this and other competing uses.~~

~~6. Impact on surrounding land uses.~~

~~7. Accessibility to transmission corridors.~~

~~8. Environmental impacts.~~

~~9. Requirements applicable under any federally delegated or approved permit program.~~

(3) ~~(c)~~ Each report described in subsection (2) ~~paragraphs (a) and (b)~~ shall contain:

(a) A notice of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception ~~all information on variances, exemptions, exceptions~~, or other relief is necessary in order for the proposed electrical power plant to be certified. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of that agency. However, no variance shall be granted from standards or regulations of the department

applicable under any federally delegated or approved permit program, except as expressly allowed in such program. ~~which may be required by s. 403.511(2) and~~

(b) A recommendation for approval or denial of the application.

(c) Any proposed conditions of certification on matters within the jurisdiction of such agency. For each condition proposed by an agency in its report, the agency shall list the specific statute, rule, or ordinance which authorizes the proposed condition.

(d) The agencies shall initiate the activities required by this section no later than 30 days after the complete application is distributed. The agencies shall keep the applicant and the department informed as to the progress of the studies and any issues raised thereby.

~~(3) No later than 60 days after the application for a federally required new source review or prevention of significant deterioration permit for the electrical power plant is complete and sufficient, the department shall issue its preliminary determination on such permit. Notice of such determination shall be published as required by the department's rules for notices of such permits. The department shall receive public comments and comments from the United States Environmental Protection Agency and other affected agencies on the preliminary determination as provided for in the federally approved state implementation plan. The department shall maintain a record of all comments received and considered in taking action on such permits. If a petition for an~~

~~administrative hearing on the department's preliminary determination is filed by a substantially affected person, that hearing shall be consolidated with the certification hearing.~~

(4)(a) No later than 150 days after the application is filed, the Public Service Commission shall prepare a report as to the present and future need for electrical generating capacity to be supplied by the proposed electrical power plant. The report shall include the commission's determination pursuant to s. 403.519 and may include the commission's comments with respect to any other matters within its jurisdiction.

(b) Receipt of an affirmative determination of need by the submittal deadline under paragraph (a) shall be a condition precedent to issuance of the department's project analysis and conduct of the certification hearing.

(5) ~~(4)~~ The department shall prepare a project ~~written~~ analysis, which shall be filed with the designated administrative law judge and served on all parties no later than 130 ~~240~~ days after the ~~complete~~ application is determined complete ~~filed with the department, but no later than 60 days prior to the hearing~~, and which shall include:

(a) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance and consistent with matters within the department's standard jurisdiction, including ~~with~~ the rules of the department, as well as whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the nonprocedural requirements of the affected agencies.

(b) Copies of the studies and reports required by this section ~~and s. 403.519~~.

(c) The comments received by the department from any other agency or person.

(d) The recommendation of the department as to the disposition of the application, of variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed.

(e) If available, the recommendation of the department regarding the issuance of any license required pursuant to a federally delegated or approved permit program.

~~(f) Copies of the department's draft of the operation permit for a major source of air pollution, which must also be provided to the United States Environmental Protection Agency for review within 5 days after issuance of the written analysis.~~

(6) ~~(5)~~ Except when good cause is shown, the failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report within the allowed time, shall not be grounds for the alteration of any time limitation in this act. Neither the failure to submit a preliminary statement of issues or a report nor the inadequacy of the preliminary statement of issues or report are ~~shall be~~ grounds to deny or condition certification.

Section 29. Section 403.508, Florida Statutes, is amended to read:

403.508 Land use and certification hearings ~~proceedings~~, parties, participants.--

(1)(a) If a petition for a hearing on land use has been filed pursuant to s. 403.50665, the designated administrative law judge shall conduct a land use hearing in the county of the proposed site or directly associated facility, as applicable, as expeditiously as possible, but not later than 30 ~~within 90~~ days after the department's receipt of the petition ~~a complete application for electrical power plant site certification by the department~~. The place of such hearing shall be as close as possible to the proposed site or directly associated facility. If a petition is filed, the hearing shall be held regardless of the status of the completeness of the application. However, incompleteness of information necessary for a local government to evaluate an application may be claimed by the local government as cause for a statement of inconsistency with existing land use plans and zoning ordinances under s. 403.50665.

(b) Notice of the land use hearing shall be published in accordance with the requirements of s. 403.5115.

(c) ~~(2)~~ The sole issue for determination at the land use hearing shall be whether or not the proposed site is consistent and in compliance with existing land use plans and zoning ordinances. If the administrative law judge concludes that the proposed site is not consistent or in compliance with existing land use plans and zoning ordinances, the administrative law judge shall receive at the hearing evidence on, and address in the recommended order any changes to or approvals or variances under, the applicable land use plans or zoning ordinances which

will render the proposed site consistent and in compliance with the local land use plans and zoning ordinances.

(d) The designated administrative law judge's recommended order shall be issued within 30 days after completion of the hearing and shall be reviewed by the board within 60 ~~45~~ days after receipt of the recommended order by the board.

(e) If it is determined by the board that the proposed site does conform with existing land use plans and zoning ordinances in effect as of the date of the application, or as otherwise provided by this act, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of ~~affect~~ the proposed electrical power plant on the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

(f) If it is determined by the board that the proposed site does not conform with existing land use plans and zoning ordinances, ~~it shall be the responsibility of the applicant to make the necessary application for rezoning. Should the application for rezoning be denied, the applicant may appeal this decision to~~ the board~~, which~~ may, if it determines after notice and hearing and upon consideration of the recommended order on land use and zoning issues that it is in the public interest to authorize the use of the land as a site for an electrical power plant, authorize an amendment, rezoning, variance, or other approval ~~a variance~~ to the adopted land use plan and zoning ordinances required to render the proposed site consistent with local land use plans and zoning ordinances. The

board's action shall not be controlled by any other procedural requirements of law. In the event a variance or other approval is denied by the board, it shall be the responsibility of the applicant to make the necessary application for any approvals determined by the board as required to make the proposed site consistent and in compliance with local land use plans and zoning ordinances. No further action may be taken on the complete application ~~by the department~~ until the proposed site conforms to the adopted land use plan or zoning ordinances or the board grants relief as provided under this act.

(2)(a) ~~(3)~~ A certification hearing shall be held by the designated administrative law judge no later than 265 ~~300~~ days after the ~~complete~~ application is filed with the department~~;~~ ~~however, an affirmative determination of need by the Public Service Commission pursuant to s. 403.519 shall be a condition precedent to the conduct of the certification hearing~~. The certification hearing shall be held at a location in proximity to the proposed site. ~~The certification hearing shall also constitute the sole hearing allowed by chapter 120 to determine the substantial interest of a party regarding any required agency license or any related permit required pursuant to any federally delegated or approved permit program.~~ At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 45 ~~60~~ days after the filing of the hearing transcript. ~~In the event the administrative law judge fails to issue a recommended order within 60 days after the filing of the~~

~~hearing transcript, the administrative law judge shall submit a report to the board with a copy to all parties within 60 days after the filing of the hearing transcript to advise the board of the reason for the delay in the issuance of the recommended order and of the date by which the recommended order will be issued.~~

(b) Notice of the certification hearing and notice of the deadline for filing of notice of intent to be a party shall be made in accordance with the requirements of s. 403.5115.

(3)(a) ~~(4)(a)~~ Parties to the proceeding shall include:

1. The applicant.
2. The Public Service Commission.
3. The Department of Community Affairs.
4. The Fish and Wildlife Conservation Commission.
5. The water management district.
6. The department.
7. The regional planning council.
8. The local government.
9. The Department of Transportation.

(b) Any party listed in paragraph (a) other than the department or the applicant may waive its right to participate in these proceedings. If such listed party fails to file a notice of its intent to be a party on or before the 90th day prior to the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Notwithstanding the provisions of chapter 120, upon the filing with the administrative law judge of a notice of intent to be a party no later than 75 days after the application

is filed ~~at least 15 days prior to the date of the land use hearing~~, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; to protect the environment, personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote comprehensive planning or orderly development of the area in which the proposed electrical power plant is to be located.

(d) Notwithstanding paragraph (e), failure of an agency described in subparagraph (c)1. to file a notice of intent to be a party within the time provided herein shall constitute a waiver of the right of that agency to participate as a party in the proceeding.

(e) Other parties may include any person, including those persons enumerated in paragraph (c) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules. Intervention pursuant to this paragraph may be granted at the discretion of the designated administrative law judge and upon such conditions as he or she may prescribe any time prior to 30 days before the commencement of the certification hearing.

(f) Any agency, including those whose properties or works are being affected pursuant to s. 403.509(4), shall be made a party upon the request of the department or the applicant.

(4)(a) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:

1. The applicant.

2. The department.

3. State agencies.

4. Regional agencies, including regional planning councils and water management districts.

5. Local governments.

6. Other parties.

(b) ~~(5)~~ When appropriate, any person may be given an opportunity to present oral or written communications to the designated administrative law judge. If the designated administrative law judge proposes to consider such communications, then all parties shall be given an opportunity to cross-examine or challenge or rebut such communications.

(5) At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 45 days after the filing of the hearing transcript.

(6)(a) No earlier than 29 days prior to the conduct of the certification hearing, the department or the applicant may request that the administrative law judge cancel the

certification hearing and relinquish jurisdiction to the department if all parties to the proceeding stipulate that there are no disputed issues of fact or law to be raised at the certification hearing, and if sufficient time remains for the applicant and the department to publish public notices of the cancellation of the hearing at least 3 days prior to the scheduled date of the hearing.

(b) The administrative law judge shall issue an order granting or denying the request within 5 days after receipt of the request.

(c) If the administrative law judge grants the request, the department and the applicant shall publish notices of the cancellation of the certification hearing, in accordance with s. 403.5115.

(d)1. If the administrative law judge grants the request, the department shall prepare and issue a final order in accordance with s. 403.509(1)(a).

2. Parties may submit proposed recommended orders to the department no later than 10 days after the administrative law judge issues an order relinquishing jurisdiction.

(7) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.

~~(6) The designated administrative law judge shall have all powers and duties granted to administrative law judges by chapter 120 and this chapter and by the rules of the department and the Administration Commission, including the authority to~~

~~resolve disputes over the completeness and sufficiency of an application for certification.~~

~~(7) The order of presentation at the certification hearing, unless otherwise changed by the administrative law judge to ensure the orderly presentation of witnesses and evidence, shall be:~~

~~(a) The applicant.~~

~~(b) The department.~~

~~(c) State agencies.~~

~~(d) Regional agencies, including regional planning councils and water management districts.~~

~~(e) Local governments.~~

~~(f) Other parties.~~

(8) In issuing permits under the federally approved new source review or prevention of significant deterioration permit program, the department shall observe the procedures specified under the federally approved state implementation plan, including public notice, public comment, public hearing, and notice of applications and amendments to federal, state, and local agencies, to assure that all such permits issued in coordination with the certification of a power plant under this act are federally enforceable and are issued after opportunity for informed public participation regarding the terms and conditions thereof. When possible, any hearing on a federally approved or delegated program permit such as new source review, prevention of significant deterioration permit, or NPDES permit shall be conducted in conjunction with the certification hearing held under this act. ~~The department shall accept written comment~~

~~with respect to an application for, or the department's preliminary determination on, a new source review or prevention of significant deterioration permit for a period of no less than 30 days from the date notice of such action is published. Upon request submitted within 30 days after published notice, the department shall hold a public meeting, in the area affected, for the purpose of receiving public comment on issues related to the new source review or prevention of significant deterioration permit. If requested following notice of the department's preliminary determination, the public meeting to receive public comment shall be held prior to the scheduled certification hearing. The department shall also solicit comments from the United States Environmental Protection Agency and other affected federal agencies regarding the department's preliminary determination for any federally required new source review or prevention of significant deterioration permit.~~ It is the intent of the Legislature that the review, processing, and issuance of such federally delegated or approved permits be closely coordinated with the certification process established under this part. In the event of a conflict between the certification process and federally required procedures ~~contained in the state implementation plan,~~ the applicable federal requirements ~~of the implementation plan~~ shall control.

Section 30. Section 403.509, Florida Statutes, is amended to read:

403.509 Final disposition of application.--

(1)(a) If the administrative law judge has granted a request to cancel the certification hearing and has relinquished

jurisdiction to the department under the provisions of s. 403.508(6), within 40 days thereafter, the secretary of the department shall act upon the application by written order in accordance with the terms of this act and the stipulation of the parties in requesting cancellation of the certification hearing.

(b) If the administrative law judge has not granted a request to cancel the certification hearing under the provisions of s. 403.508(6), within 60 days after receipt of the designated administrative law judge's recommended order, the board shall act upon the application by written order, approving ~~certification~~ or denying certification ~~the issuance of a certificate~~, in accordance with the terms of this act, and stating the reasons for issuance or denial. If certification ~~the certificate~~ is denied, the board shall set forth in writing the action the applicant would have to take to secure the board's approval of the application.

(2) The issues that may be raised in any hearing before the board shall be limited to those matters raised in the certification proceeding before the administrative law judge or raised in the recommended order. All parties, or their representatives, or persons who appear before the board shall be subject to the provisions of s. 120.66.

(3) In determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board, or secretary when applicable, shall consider whether, and the extent to which, the location of the electrical power plant and directly associated facilities and their construction and operation will:

(a) Provide reasonable assurance that operational safeguards are technically sufficient for the public welfare and protection.

(b) Comply with applicable nonprocedural requirements of agencies.

(c) Be consistent with applicable local government comprehensive plans and land development regulations.

(d) Meet the electrical energy needs of the state in an orderly and timely fashion.

(e) Provide a reasonable balance between the need for the facility as established pursuant to s. 403.519, and the impacts upon air and water quality, fish and wildlife, water resources, and other natural resources of the state resulting from the construction and operation of the facility.

(f) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life.

(g) Serve and protect the broad interests of the public.

~~(3) Within 30 days after issuance of the certification, the department shall issue and forward to the United States Environmental Protection Agency a proposed operation permit for a major source of air pollution and must issue or deny any other license required pursuant to any federally delegated or approved permit program. The department's action on the license and its action on the proposed operation permit for a major source of air pollution shall be based upon the record and recommended order of the certification hearing. The department's actions on~~

~~a federally required new source review or prevention of significant deterioration permit shall be based on the record and recommended order of the certification hearing and of any other proceeding held in connection with the application for a new source review or prevention of significant deterioration permit, on timely public comments received with respect to the application or preliminary determination for such permit, and on the provisions of the state implementation plan.~~

(4) The department's action on a federally required new source review or prevention of significant deterioration permit shall differ from the actions taken by the siting board regarding the certification if the federally approved state implementation plan requires such a different action to be taken by the department. Nothing in this part shall be construed to displace the department's authority as the final permitting entity under the federally approved permit program. Nothing in this part shall be construed to authorize the issuance of a new source review or prevention of significant deterioration permit which does not conform to the requirements of the federally approved state implementation plan. ~~Any final operation permit for a major source of air pollution must be issued in accordance with the provisions of s. 403.0872. Unless the federally delegated or approved permit program provides otherwise, licenses issued by the department under this subsection shall be effective for the term of the certification issued by the board. If renewal of any license issued by the department pursuant to a federally delegated or approved permit program is required, such renewal shall not affect the certification issued by the board,~~

~~except as necessary to resolve inconsistencies pursuant to s. 403.516(1)(a).~~

(5) ~~(4)~~ In regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use, the connection thereto, or the crossing thereof, for the electrical power plant and directly associated facilities ~~site~~ and to direct any such agency to execute, within 30 days after the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification. However, the applicant shall seek any necessary interest in state lands the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund from the Board of Trustees or from the governing board of the water management district created pursuant to chapter 373 before, during, or after the certification proceeding, and certification may be made contingent upon issuance of the appropriate interest. Neither the applicant nor any party to the certification proceeding may directly or indirectly raise or relitigate any matter that was or could have been an issue in the certification proceeding in any proceeding before the Board of Trustees of the Internal Improvement Trust Fund wherein the applicant is seeking necessary interest in state lands, but the information presented in the certification proceeding shall be available for review by the Board of Trustees and its staff.

(6) ~~(5)~~ Except as specified in subsection (4) ~~for the issuance of any operation permit for a major source of air~~

~~pollution pursuant to s. 403.0872~~, the issuance or denial of the certification by the board or secretary of the department ~~and the issuance or denial of any related department license required pursuant to any federally delegated or approved permit program~~ shall be the final administrative action required as to that application.

~~(6) All certified electrical power plants must apply for and obtain a major source air operation permit pursuant to s. 403.0872. Major source air operation permit applications for certified electrical power plants must be submitted pursuant to a schedule developed by the department. To the extent that any conflicting provision, limitation, or restriction under any rule, regulation, or ordinance imposed by any political subdivision of the state, or by any local pollution control program, was superseded during the certification process pursuant to s. 403.510(1), such rule, regulation, or ordinance shall continue to be superseded for purposes of the major source air operation permit program under s. 403.0872.~~

Section 31. Section 403.511, Florida Statutes, is amended to read:

403.511 Effect of certification.--

(1) Subject to the conditions set forth therein, any certification ~~signed by the Governor~~ shall constitute the sole license of the state and any agency as to the approval of the site and the construction and operation of the proposed electrical power plant, except for the issuance of department licenses required under any federally delegated or approved

permit program and except as otherwise provided in subsection (4).

(2)(a) The certification shall authorize the licensee ~~applicant~~ named therein to construct and operate the proposed electrical power plant, subject only to the conditions of certification set forth in such certification, and except for the issuance of department licenses or permits required under any federally delegated or approved permit program.

(b)1. Except as provided in subsection (4), the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use and zoning approvals which affect the proposed electrical power plant or its site, unless waived by the agency as provided below and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order ~~by the siting board~~ that the public interests set forth in s. 403.509(3) ~~403.502~~ in certifying the electrical power plant at the site proposed by the applicant overrides the public interest protected by the

statute or rule from which relief is sought. ~~Each party shall notify the applicant and other parties at least 60 days prior to the certification hearing of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any electrical power plant proposed for certification. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of the department or any other agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.~~

(3) The certification and any order on land use and zoning issued under this act shall be in lieu of any license, permit, certificate, or similar document required by any state, regional, or local agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 380, chapter 381, chapter 387, chapter 403, except for permits issued pursuant to any federally delegated or approved permit program ~~s. 403.0885~~ and except as provided in ~~s. 403.509(3) and (6),~~ chapter 404~~,~~ or the Florida Transportation Code~~, or 33 U.S.C. s. 1341~~.

(4) This act shall not affect in any way the ratemaking powers of the Public Service Commission under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that

construction be in compliance with applicable building construction codes.

(5)(a) An electrical power plant certified pursuant to this act shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to electrical power plants. Except when express variances, exceptions, exemptions, or other relief have been granted, subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications.

(b) Upon written notification to the department, any holder of a certification issued pursuant to this act may choose to operate the certified electrical power plant in compliance with any rule subsequently adopted by the department which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

(c) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, including those related to rulemaking proceedings. This subsection shall apply to previously issued certifications.

(6) No term or condition of a site certification shall be interpreted to supersede or control the provisions of a final operation permit for a major source of air pollution issued by the department pursuant to s. 403.0872 to a ~~such~~ facility certified under this part.

(7) Pursuant to s. 380.23, electrical power plants are subject to the federal coastal consistency review program. Issuance of certification shall constitute the state's certification of coastal zone consistency.

Section 32. Section 403.5112, Florida Statutes, is created to read:

403.5112 Filing of notice of certified corridor route.--

(1) Within 60 days after certification of a directly associated linear facility pursuant to this act, the applicant shall file, in accordance with s. 28.222, with the department and the clerk of the circuit court for each county through which the corridor will pass, a notice of the certified route.

(2) The notice shall consist of maps or aerial photographs in the scale of 1:24,000 which clearly show the location of the certified route and shall state that the certification of the corridor will result in the acquisition of rights-of-way within the corridor. Each clerk shall record the filing in the official record of the county for the duration of the certification or until such time as the applicant certifies to the department and the clerk that all lands required for the transmission line rights-of-way within the corridor have been acquired within such county, whichever is sooner.

Section 33. Section 403.5113, Florida Statutes, is created to read:

403.5113 Postcertification amendments.--

(1) If, subsequent to certification by the board, a licensee proposes any material change to the application and revisions or amendments thereto, as certified, the licensee

shall submit a written request for amendment and a description of the proposed change to the application to the department. Within 30 days after the receipt of the request for the amendment, the department shall determine whether the proposed change to the application requires a modification of the conditions of certification.

(2) If the department concludes that the change would not require a modification of the conditions of certification, the department shall provide written notification of the approval of the proposed amendment to the licensee, all agencies, and all other parties.

(3) If the department concludes that the change would require a modification of the conditions of certification, the department shall provide written notification to the licensee that the proposed change to the application requires a request for modification pursuant to s. 403.516.

Section 34. Section 403.5115, Florida Statutes, is amended to read:

403.5115 Public notice; costs of proceeding.--

(1) The following notices are to be published by the applicant:

(a) Notice ~~A notice~~ of the filing of a notice of intent under s. 403.5063, which shall be published within 21 days after the filing of the notice. The notice shall be published as specified by subsection (2), except that the newspaper notice shall be one-fourth page in size in a standard size newspaper or one-half page in size in a tabloid size newspaper.

(b) Notice ~~A notice~~ of filing of the application, which shall include a description of the proceedings required by this act, within 21 days after the date of the application filing ~~be published as specified in subsection (2), within 15 days after the application has been determined complete~~. Such notice shall give notice of the provisions of s. 403.511(1) and (2) ~~and that the application constitutes a request for a federally required new source review or prevention of significant deterioration permit~~.

(c) Notice of the land use determination made pursuant to s. 403.50665(1) within 15 days after the determination is filed.

(d) Notice of the land use hearing, which shall be published as specified in subsection (2), no later than 15 ~~45~~ days before the hearing.

(e) ~~(d)~~ Notice of the certification hearing and notice of the deadline for filing notice of intent to be a party, which shall be published as specified in subsection (2), at least 65 days before the date set for the certification ~~no later than 45 days before the~~ hearing.

(f) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days before the date of the originally scheduled certification hearing.

(g) ~~(e)~~ Notice of modification when required by the department, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification.~~, except that~~ The newspaper notice shall be of a size as directed by the department commensurate with the scope of the modification.

2. If a hearing is to be conducted in response to the request for modification, then notice shall be published no later than 30 days before the hearing ~~provided as specified in paragraph (d)~~.

(h)~~(f)~~ Notice of a supplemental application, which shall be published as specified in paragraph (b) and subsection (2).~~follows:~~

~~1. Notice of receipt of the supplemental application shall be published as specified in paragraph (b).~~

~~2. Notice of the certification hearing shall be published as specified in paragraph (d).~~

(i) Notice of existing site certification pursuant to s. 403.5175. Notices shall be published as specified in paragraph (b) and subsection (2).

(2) Notices provided by the applicant shall be published in newspapers of general circulation within the county or counties in which the proposed electrical power plant will be located. The newspaper notices shall be at least one-half page in size in a standard size newspaper or a full page in a tabloid size newspaper ~~and published in a section of the newspaper other than the legal notices section~~. These notices shall include a map generally depicting the project and all associated facilities corridors. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that

county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(4) The department shall arrange for publication of the following notices in the manner specified by chapter 120 and provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose:

(a) Notice ~~Publish in the Florida Administrative Weekly notices~~ of the filing of the notice of intent within 15 days after receipt of the notice.~~;~~

(b) Notice of the filing of the application, no later than 21 days after the application filing.~~;~~

(c) Notice of the land use determination made pursuant to s. 403.50665(1) within 15 days after the determination is filed.

(d) Notice of the land use hearing before the administrative law judge, if applicable, no later than 15 days before the hearing.~~;~~

(e) Notice of the land use hearing before the board, if applicable.

(f) Notice of the certification hearing at least 45 days before the date set for the certification hearing.~~;~~

(g) Notice of the cancellation of the certification hearing, if applicable, no later than 3 days prior to the date of the originally scheduled certification hearing.

(h) Notice of the hearing before the board, if applicable.~~;~~

(i) Notice and of stipulations, proposed agency action, or petitions for modification.~~; and~~

~~(b) Provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for this purpose.~~

~~(5) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.~~

Section 35. Section 403.513, Florida Statutes, is amended to read:

403.513 Review.--Proceedings under this act shall be subject to judicial review as provided in chapter 120. When possible, separate appeals of the certification order issued by the board and of any department permit issued pursuant to a federally delegated or approved permit program may ~~shall~~ be consolidated for purposes of judicial review.

Section 36. Section 403.516, Florida Statutes, is amended to read:

403.516 Modification of certification.--

(1) A certification may be modified after issuance in any one of the following ways:

(a) The board may delegate to the department the authority to modify specific conditions in the certification.

(b)1. The department may modify specific conditions of a site certification which are inconsistent with the terms of any federally delegated or approved ~~final air pollution operation~~ permit for the certified electrical power plant ~~issued by the United States Environmental Protection Agency under the terms of 42 U.S.C. s. 7661d~~.

2. Such modification may be made without further notice if the matter has been previously noticed under the requirements for any federally delegated or approved permit program.

(c) The licensee may file a petition for modification with the department, or the department may initiate the modification upon its own initiative.

1. A petition for modification must set forth:

a. The proposed modification.

b. The factual reasons asserted for the modification.

c. The anticipated environmental effects of the proposed modification.

2.~~(b)~~ The department may modify the terms and conditions of the certification if no party to the certification hearing objects in writing to such modification within 45 days after notice by mail to such party's last address of record, and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of public notice.

3. If objections are raised or the department denies the request, the applicant or department may file a request ~~petition~~ for a hearing on the modification with the department. Such request shall be handled pursuant to chapter 120 ~~paragraph (c)~~.

~~(c) A petition for modification may be filed by the applicant or the department setting forth:~~

~~1. The proposed modification,~~

~~2. The factual reasons asserted for the modification, and~~

~~3. The anticipated effects of the proposed modification on the applicant, the public, and the environment.~~

~~The petition for modification shall be filed with the department and the Division of Administrative Hearings.~~

4. Requests referred to the Division of Administrative Hearings shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.

(d) As required by s. 403.511(5).

~~(2) Petitions filed pursuant to paragraph (1)(c) shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.~~

(2)~~(3)~~ Any agreement or modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

Section 37. Section 403.517, Florida Statutes, is amended to read:

403.517 Supplemental applications for sites certified for ultimate site capacity.--

(1)(a) Supplemental ~~The department shall adopt rules governing the processing of supplemental~~ applications may be submitted for certification of the construction and operation of electrical power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this act. Supplemental applications shall be limited to electrical power plants using the fuel type previously certified for that site. Such applications shall include all new directly associated facilities that support the construction and operation of the electrical power plant. ~~The rules adopted pursuant to this section shall include provisions for:~~

~~1. Prompt appointment of a designated administrative law judge.~~

~~2. The contents of the supplemental application.~~

~~3. Resolution of disputes as to the completeness and sufficiency of supplemental applications by the designated administrative law judge.~~

~~4. Public notice of the filing of the supplemental applications.~~

~~5. Time limits for prompt processing of supplemental applications.~~

~~6. Final disposition by the board within 215 days of the filing of a complete supplemental application.~~

(b) The review shall use the same procedural steps and notices as for an initial application.

(c) The time limits for the processing of a complete supplemental application shall be designated by the department commensurate with the scope of the supplemental application, but shall not exceed any time limitation governing the review of initial applications for site certification pursuant to this act, it being the legislative intent to provide shorter time limitations for the processing of supplemental applications for electrical power plants to be constructed and operated at sites which have been previously certified for an ultimate site capacity.

(d) ~~(c)~~ Any time limitation in this section or in rules adopted pursuant to this section may be altered pursuant to s. 403.5095 ~~by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice, or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of chapter 120 and this act in considering and processing such supplemental applications~~.

(2) ~~Supplemental applications shall be reviewed as provided in ss. 403.507-403.511, except that the time limits provided in this section shall apply to such supplemental applications.~~

~~(3)~~ The land use and zoning consistency determination of s. 403.50665 ~~hearing requirements of s. 403.508(1) and (2)~~ shall not be applicable to the processing of supplemental applications pursuant to this section so long as:

(a) The previously certified ultimate site capacity is not exceeded; and

(b) The lands required for the construction or operation of the electrical power plant which is the subject of the supplemental application are within the boundaries of the previously certified site.

~~(4) For the purposes of this act, the term "ultimate site capacity" means the maximum generating capacity for a site as certified by the board.~~

Section 38. Section 403.5175, Florida Statutes, is amended to read:

403.5175 Existing electrical power plant site certification.--

(1) An electric utility that owns or operates an existing electrical power plant as defined in s. 403.503(12) may apply for certification of an existing power plant and its site in order to obtain all agency licenses necessary to ensure ~~assure~~ compliance with federal or state environmental laws and regulation using the centrally coordinated, one-stop licensing process established by this part. An application for site certification under this section must be in the form prescribed by department rule. Applications must be reviewed and processed using the same procedural steps and notices as for an application for a new facility ~~in accordance with ss. 403.5064-403.5115~~, except that a determination of need by the Public Service Commission is not required.

(2) An application for certification under this section must include:

(a) A description of the site and existing power plant installations;

(b) A description of all proposed changes or alterations to the site or electrical power plant, including all new associated facilities that are the subject of the application;

(c) A description of the environmental and other impacts caused by the existing utilization of the site and directly associated facilities, and the operation of the electrical power plant that is the subject of the application, and of the environmental and other benefits, if any, to be realized as a result of the proposed changes or alterations if certification is approved and such other information as is necessary for the reviewing agencies to evaluate the proposed changes and the expected impacts;

(d) The justification for the proposed changes or alterations;

(e) Copies of all existing permits, licenses, and compliance plans authorizing utilization of the site and directly associated facilities or operation of the electrical power plant that is the subject of the application.

(3) The land use and zoning determination ~~hearing~~ requirements of s. 403.50665 ~~s. 403.508(1) and (2)~~ do not apply to an application under this section if the applicant does not propose to expand the boundaries of the existing site. If the applicant proposes to expand the boundaries of the existing site to accommodate portions of the plant or associated facilities, a land use and zoning determination shall be made ~~hearing must be held~~ as specified in s. 403.50665 ~~s. 403.508(1) and (2)~~; provided, however, that the sole issue for determination ~~through the land use hearing~~ is whether the proposed site expansion is

consistent and in compliance with the existing land use plans and zoning ordinances.

(4) In considering whether an application submitted under this section should be approved in whole, approved with appropriate conditions, or denied, the board shall consider whether, and to the extent to which the proposed changes to the electrical power plant and its continued operation under certification will:

(a) Comply with the provisions of s. 403.509(3). ~~applicable nonprocedural requirements of agencies;~~

(b) Result in environmental or other benefits compared to current utilization of the site and operations of the electrical power plant if the proposed changes or alterations are undertaken. ~~;~~

~~(c) Minimize, through the use of reasonable and available methods, the adverse effects on human health, the environment, and the ecology of the land and its wildlife and the ecology of state waters and their aquatic life; and~~

~~(d) Serve and protect the broad interests of the public.~~

(5) An applicant's failure to receive approval for certification of an existing site or an electrical power plant under this section is without prejudice to continued operation of the electrical power plant or site under existing agency licenses.

Section 39. Section 403.518, Florida Statutes, is amended to read:

403.518 Fees; disposition.--

~~(1)~~ The department shall charge the applicant the following fees, as appropriate, which, unless otherwise specified, shall be paid into the Florida Permit Fee Trust Fund:

(1)~~(a)~~ A fee for a notice of intent pursuant to s. 403.5063, in the amount of $2,500, to be submitted to the department at the time of filing of a notice of intent. The notice-of-intent fee shall be used and disbursed in the same manner as the application fee.

(2)~~(b)~~ An application fee, which shall not exceed $200,000. The fee shall be fixed by rule on a sliding scale related to the size, type, ultimate site capacity, or increase in electrical generating capacity proposed by the application~~, or the number and size of local governments in whose jurisdiction the electrical power plant is located~~.

(a)~~1.~~ Sixty percent of the fee shall go to the department to cover any costs associated with coordinating the review ~~reviewing~~ and acting upon the application, to cover any field services associated with monitoring construction and operation of the facility, and to cover the costs of the public notices published by the department.

(b)~~2.~~ The following percentages ~~Twenty percent of the fee or $25,000, whichever is greater,~~ shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services:~~.~~

1. Five percent to compensate expenses from the initial exercise of duties associated with the filing of an application.

2. An additional 5 percent if a land use hearing is held pursuant to s. 403.508.

3. An additional 10 percent if a certification hearing is held pursuant to s. 403.508.

(c)1.~~3.~~ Upon written request with proper itemized accounting within 90 days after final agency action by the board or withdrawal of the application, the agencies that prepared reports pursuant to s. 403.507 or participated in a hearing pursuant to s. 403.508 may submit a written request to the department for reimbursement of expenses incurred during the certification proceedings. The request shall contain an accounting of expenses incurred which may include time spent reviewing the application, ~~the department shall reimburse the Department of Community Affairs, the Fish and Wildlife Conservation Commission, and any water management district created pursuant to chapter 373, regional planning council, and local government in the jurisdiction of which the proposed electrical power plant is to be located, and any other agency from which the department requests special studies pursuant to s. 403.507(2)(a)7. Such reimbursement shall be authorized for~~ the preparation of any studies required of the agencies by this act, ~~and for~~ agency travel and per diem to attend any hearing held pursuant to this act, and for any agency or local government's provision of notice of public meetings or hearings required as a result of the application for certification ~~governments to participate in the proceedings~~. The department shall review the request and verify that the expenses are valid. Valid expenses shall be reimbursed; however, in the event the amount of funds available for reimbursement ~~allocation~~ is insufficient to provide for full compensation ~~complete~~

~~reimbursement~~ to the agencies requesting reimbursement, reimbursement shall be on a prorated basis.

2. If the application review is held in abeyance for more than 1 year, the agencies may submit a request for reimbursement.

(d) ~~4.~~ If any sums are remaining, the department shall retain them for its use in the same manner as is otherwise authorized by this act; provided, however, that if the certification application is withdrawn, the remaining sums shall be refunded to the applicant within 90 days after withdrawal.

(3)(a) ~~(c)~~ A certification modification fee, which shall not exceed $30,000. The department shall establish rules for determining such a fee based on the equipment redesign, change in site size, type, increase in generating capacity proposed, or change in an associated linear facility location.

(b) The fee shall be submitted to the department with a ~~formal~~ petition for modification ~~to the department~~ pursuant to s. 403.516. This fee shall be established, disbursed, and processed in the same manner as the application fee in subsection (2) ~~paragraph (b)~~, except that the Division of Administrative Hearings shall not receive a portion of the fee unless the petition for certification modification is referred to the Division of Administrative Hearings for hearing. If the petition is so referred, only $10,000 of the fee shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. ~~The fee for a modification by agreement filed pursuant to s. 403.516(1)(b) shall be $10,000 to be paid upon the filing~~

~~of the request for modification. Any sums remaining after payment of authorized costs shall be refunded to the applicant within 90 days of issuance or denial of the modification or withdrawal of the request for modification.~~

(4) ~~(d)~~ A supplemental application fee, not to exceed $75,000, to cover all reasonable expenses and costs of the review, processing, and proceedings of a supplemental application. This fee shall be established, disbursed, and processed in the same manner as the certification application fee in subsection (2) ~~paragraph (b), except that only $20,000 of the fee shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services~~.

(5) ~~(e)~~ An existing site certification application fee, not to exceed $200,000, to cover all reasonable costs and expenses of the review processing and proceedings for certification of an existing power plant site under s. 403.5175. This fee must be established, disbursed, and processed in the same manner as the certification application fee in subsection (2) ~~paragraph (b)~~.

~~(2) Effective upon the date commercial operation begins, the operator of an electrical power plant certified under this part is required to pay to the department an annual operation license fee as specified in s. 403.0872(11) to be deposited in the Air Pollution Control Trust Fund.~~

Section 40. Any application for electrical power plant certification filed pursuant to ss. 403.501-403.518, Florida Statutes, shall be processed under the provisions of the law applicable at the time the application was filed, except that

the provisions relating to cancellation of the certification hearing under s. 403.508(6), Florida Statutes, the provisions relating to the final disposition of the application and issuance of the written order by the secretary under s. 403.509(1)(a), Florida Statutes, and notice of the cancellation of the certification hearing under s. 403.5115, Florida Statutes, may apply to any application for electrical power plant certification.

Section 41. Section 403.519, Florida Statutes, is amended to read:

403.519 Exclusive forum for determination of need.--

(1) On request by an applicant or on its own motion, the commission shall begin a proceeding to determine the need for an electrical power plant subject to the Florida Electrical Power Plant Siting Act.

(2) The applicant ~~commission~~ shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed electrical power plant will be located. The notice shall be at least one-quarter of a page and published at least 21 ~~45~~ days prior to the scheduled date for the proceeding. The commission shall publish notice of the proceeding in the manner specified by chapter 120 at least 21 days prior to the scheduled date for the proceeding.

(3) The commission shall be the sole forum for the determination of this matter, which accordingly shall not be raised in any other forum or in the review of proceedings in such other forum. In making its determination, the commission shall take into account the need for electric system reliability

and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, and whether the proposed plant is the most cost-effective alternative available. The commission shall also expressly consider the conservation measures taken by or reasonably available to the applicant or its members which might mitigate the need for the proposed plant and other matters within its jurisdiction which it deems relevant. The commission's determination of need for an electrical power plant shall create a presumption of public need and necessity and shall serve as the commission's report required by s. 403.507(4) ~~403.507(2)(a)2~~. An order entered pursuant to this section constitutes final agency action.

Section 42. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 857 Insurance Premium Tax
SPONSOR(S): Mahon
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	8 Y, 0 N	Levin	Diez-Arguelles
2) Civil Justice Committee	7 Y, 0 N	Blalock	Bond
3) Fiscal Council		Levin	Kelly
4)			
5)			

SUMMARY ANALYSIS

Title insurance is sold as part of the initial purchase or refinance of real property, and the purchaser of the title insurance pays a premium for the insurance coverage.

This bill reduces the amount of the premiums for title insurance subject to the 1.75 percent tax. The 1.75 percent tax on title insurance is due only on that portion of the title insurance premium that is not paid as a commission to a title insurance agent. This change is implemented over a three year period, with 80 percent of the total premium subject to the tax in 2007, 55 percent in 2008, and up to 30 percent in 2009 and subsequent years.

This bill also amends the definition of "premium" by removing the reference to the 1.75 percent tax, in conformity to the other changes in the bill.

The fiscal impact of the bill is a negative ($2.6 million) in state revenues in FY 2006-07, a negative ($7.6 million) in state revenues in FY 2007-08, and a negative ($11.3 million) in state revenues in FY 2008-09.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes -- This bill will decrease premium taxes paid on title insurance policies.

B. EFFECT OF PROPOSED CHANGES:

Background

Part III, chapter 624, F.S., a portion of the Florida Insurance Code, contains the general requirements an insurer must follow to receive a certificate of authority to transact business in Florida. The Department of Financial Services (DFS) regulates the insurance industry in Florida.

Section 624.509, F.S., imposes a tax of 1.75 percent on the gross amount of premiums on title insurance.

The tax is due for all insurance premiums, including title insurance, health, life, property, and insurance to cover property, subjects, or risks located or to be performed within Florida. The law also taxes premiums for wet marine and transportation insurance and for annuity policies, but at a rate lower than the 1.75-percent of gross receipts due for all other policies.

Insures remit taxes quarterly to the Department of Revenue (DOR). Section 624.509, F.S., specifies that the insurance premium taxes are to be deposited into the state's General Revenue Fund pursuant to rules of DOR.

Title Insurance

Chapter 627, F.S., regulates insurance rates and contracts; part XIII of that chapter, which encompasses ss. 627.7711 through 627.798, F.S., governs title insurance contracts specifically.

Title insurance is sold as part of the initial purchase or refinance of real property. A title search is conducted by an attorney or other qualified person. A title search examines ownership of a parcel of property through its years of ownership. The primary goal of a title search is to establish that all previous liens have been satisfied, that property boundaries are clear and unobstructed, and that any easements are well-defined and included in the description of the property.

Section 627.7711, F.S., contains definitions relating to the regulation of title insurance. As part of the definitions, the word "premium" means the charge made by a title insurer for a title insurance policy, including the charge related to title services, and the assumption of the risks associated with such a policy. The definition indicates that the word "premium" as used throughout part XIII of the law governing title insurance does not include commission. As a practical matter, the definition of premium with respect to title insurance includes the gross amount collected for title insurance, without consideration for any portion of the premium that is paid to the insurance carrier, agent, or agency as a commission. Staff of DFS report that commissions paid to title insurance agents frequently constitute 70 percent or more of the total price paid for such insurance. This definition of the word premium as the gross receipts for a policy, without an allowance for a commission, is standard throughout the Florida Insurance Code and the regulation of the different types of insurance policies.

Effect of Bill

This bill amends s. 624.509, F.S., to provide that the 1.75 percent tax on title insurance is due only on that portion of a title insurance premium that is not paid as a commission to an insurance agent. The bill

the premium tax, may not exceed 20 percent of the total price paid for the title insurance in 2007; 45 percent in 2008; and 70 percent for 2009 and subsequent years.

This bill amends the definition for title insurance premium in s. 627.7711, F.S., to delete a cross-reference to section 624.509, F.S. This change conforms to the other changes proposed by the bill regarding the 1.75 percent.

C. SECTION DIRECTORY:

Section 1 amends s. 624.509, F.S., to exempt up to 70 percent of the gross receipts resulting from title insurance premiums from the 1.75 percent tax due on all insurance premiums, except annuity policies and contracts.

Section 2 amends s. 627.7711, F.S., the definitions that apply to title insurance contracts. This bill deletes a cross-reference to s. 624.509, F.S., to conform to the change made by Section 1.

Section 3 provides an effective date of January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference considered the fiscal impact of this bill at its meeting on February 24, 2006.

	FY 2006-2007	FY 2007-2008	FY 2008-2009
General Revenue	($2.6 million)	($7.6 million)	($11.3 million)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

When fully implemented, the fiscal impact of this bill will be negative ($11.3 million) recurring in state revenues.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to the insurance premium tax; amending s. 624.509, F.S.; providing for separate taxation of certain title insurance gross receipts; providing limitations; amending s. 627.7711, F.S.; revising the definition of the term "premium"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.--

(1) In addition to the license taxes provided for in this chapter, each insurer shall also annually, and on or before March 1 in each year, except as to wet marine and transportation insurance taxed under s. 624.510, pay to the Department of Revenue a tax on insurance premiums, premiums for title insurance, or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations, received during the preceding calendar year, the amounts thereof to be determined as set forth in this section, to wit:

(a) An amount equal to 1.75 percent of the gross amount of such receipts on account of life and health insurance policies covering persons resident in this state and on account of all other types of policies and contracts, ~~(~~except annuity policies or contracts taxable under paragraph (b) and title insurance

policies or contracts written through affiliated and nonaffiliated agencies taxable under paragraph (c), ~~)~~ covering property, subjects, or risks located, resident, or to be performed in this state, omitting premiums on reinsurance accepted, and less return premiums or assessments, but without deductions:

1. For reinsurance ceded to other insurers;

2. For moneys paid upon surrender of policies or certificates for cash surrender value;

3. For discounts or refunds for direct or prompt payment of premiums or assessments; and

4. On account of dividends of any nature or amount paid and credited or allowed to holders of insurance policies; certificates; or surety, indemnity, reciprocal, or interinsurance contracts or agreements.~~; and~~

(b) An amount equal to 1 percent of the gross receipts on annuity policies or contracts paid by holders thereof in this state.

(c) An amount equal to 1.75 percent of the gross receipts on title insurance written through affiliated and nonaffiliated agencies, less the portion of the gross receipts retained by or paid under contract to the affiliated and nonaffiliated title insurance agents. The reduction in the insurer's total amount of title insurance premium gross receipts received through affiliated and nonaffiliated agencies may not exceed the following percentages of the total title insurance premium gross receipts received by the insurer through affiliated and nonaffiliated agencies:

1. For 2007, 20 percent.

2. For 2008, 45 percent.

3. For 2009 and subsequent years, 70 percent.

Section 2. Subsection (2) of section 627.7711, Florida Statutes, is amended to read:

627.7711 Definitions.--As used in this part, the term:

(2) "Premium" means the charge, as specified by rule of the commission, that is made by a title insurer for a title insurance policy, including the charge for performance of primary title services by a title insurer or title insurance agent or agency, and incurring the risks incident to such policy, under the several classifications of title insurance contracts and forms~~, and upon which charge a premium tax is paid under s. 624.509~~. As used in this part or in any other law, with respect to title insurance, the word "premium" does not include a commission.

Section 3. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 141 CS Workers' Compensation For First Responders
SPONSOR(S): Adams and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) State Administration Appropriations Committee	11 Y, 0 N	Rayman	Belcher
2) Domestic Security Committee	8 Y, 0 N	Newton	Newton
3) Insurance Committee	16 Y, 0 N, w/CS	Callaway	Cooper
4) Fiscal Council		Rayman	Kelly
5)			

SUMMARY ANALYSIS

In 2003 the Legislature made numerous changes to chapter 440, F.S., governing workers' compensation. On August 19, 2003, Speaker Byrd created the Homeland Security Workers' Compensation Workgroup to study workers' compensation issues affecting first responders such as firefighters, police officers, and other emergency personnel. The workgroup's charge was to study workers' compensation problems and issues that particularly affect first responders, changes in current statutes that would alleviate those problems or address those issues, the fiscal impact of the recommended changes on the agencies that employ first responders, and the impact on public safety of making or not making the recommended changes.

Based on the oral and written testimony received during the workgroup meetings from stakeholders, the workgroup identified nine primary areas of concern for first responders created by the 2003 changes to worker's compensation. The areas of concern were: permanent total disability supplemental benefits (PTD supps); standard of proof for occupational disease, repetitive exposure, and exposure to toxic substances claims; attorney fees; psychiatric injuries (which includes three recommendations by the first responders); independent medical examinations (IMEs); the definition of "first responder"; and smallpox vaccinations.

This bill addresses some of the nine primary areas of concern presented to the workgroup. The bill loosens the compensability standard of proof for first responder injuries caused by occupational disease or exposure to toxic substances, allows first responders to receive payment of PTD supps after age 62 in certain instances, and allows first responders to receive workers' compensation for adverse reactions to small pox vaccines.

The National Council on Compensation Insurance (NCCI) estimates that costs for first responder classes would increase 3.6% ($8.2 million) if this proposal were enacted in its current form. Individual self-insureds do not report data to NCCI and are not included in NCCI's estimate. As a result, additional costs are expected from individual self-insureds that employ first responders or that do not participate in the Social Security program. This includes a number of major governmental agencies across the state.

According to the Department of Financial Services, the bill has little or no impact on the Risk Management Trust Fund.

The mandate provision appears to apply because the bill requires counties or municipalities to expend funds; therefore, requiring a 2/3 vote of the membership of each house. The bill includes a statement of important state interest.

The bill provides an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill is likely to increase the cost of workers' compensation insurance paid by employers of first responders, primarily cities and counties.

B. EFFECT OF PROPOSED CHANGES:

In 2003 Special Session A, the Legislature made numerous changes to chapter 440, F.S., governing workers' compensation.[1] On August 19, 2003, Speaker Byrd created the Homeland Security Workers' Compensation Workgroup to study workers' compensation issues affecting first responders such as firefighters, police officers and other emergency personnel. The workgroup's charge was to study workers' compensation problems and issues that particularly affect first responders, changes in current statutes that would alleviate those problems or address those issues, the fiscal impact of the recommended changes on the agencies that employ first responders, and the impact on public safety upon making or not making the recommended changes. The workgroup held three meetings to gather testimony from interested parties and stakeholders about workers' compensation issues affecting first responders. Oral testimony was heard at each meeting from interested parties, and written testimony was also received by the workgroup. A written report was issued on February 3, 2004 covering the testimony heard at the workgroup meetings and the issues raised by the stakeholders.

Based on the oral and written testimony received during the workgroup meetings from stakeholders, the workgroup identified nine primary areas of concern for first responders created by the 2003 changes to worker's compensation.

Permanent Total Supplemental Benefits

The first area of concern was the revision to s. 440.15(1)(f)1, F.S., which ends payment of permanent total disability (PTD) supplemental benefits (cost-of-living adjustments) at age 62 for workers unless the worker has not been able to work enough quarters to qualify for Social Security retirement due to the work-related injury. According to testimony received at each meeting, some local governments have opted out of the Social Security program. Thus, their first responders are not eligible for Social Security retirement. These same first responders would not be eligible for PTD supplemental benefits after age 62 either under the current law.

The bill amends current law to allow any injured first responder to receive PTD supplemental benefits for life if the injured first responder is employed by an employer who does not participate in the Social Security program.

Standard of Proof for Occupational Disease and Exposure to Toxic Substances Claims

Another area of concern involved the change made to the standard of proof for occupational disease, repetitive exposure, and exposure to toxic substances claims.[2] The standard of proof is the level of proof necessary for the injured worker/claimant to prevail.

Section 440.09(1), F.S., requires that an accidental compensable injury must be the major contributing cause of any resulting injury, meaning the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only. Under s. 440.02(1), F.S. an injury or disease caused by a toxic substance requires clear and convincing

[1] Senate Bill 50A (chapter 2003-412, LOF)
[2] s. 440.02(1), F.S.; s. 440.09(1), F.S.

evidence establishing that exposure to the specific substance at the levels exposed to cause the injury or diseases sustained by the employee.

Section. 440.09, F.S. provides that in occupational disease cases both causation and sufficient exposure to a specific harmful substance known to be present in the workplace to support causation be proven by clear and convincing evidence. Currently, case law generally requires the claimant must prove a causal connection other than by merely showing that it is logical the injury arose out of the claimant's employment or that by a preponderance of the probabilities it appears that it arose out of such employment.

Courts have held that a higher standard of proof applies for occupational disease and exposure cases than other types of claims. Causation for exposure and occupational disease claims must be proven by clear evidence; a preponderance of the evidence is not enough. The District Court of Appeal noted:

> In cases involving diseases or physical defects of an employee as distinguished from external occurrences to an employee such as an automobile accident, a claimant must prove a causal connection other than by merely showing that it is logical that the injury arose out of the claimant's employment or that by a preponderance of the probabilities it appears that it arose out of such employment. There must be some clear evidence rather than speculation or conjecture establishing the causal connection between the claimant's injury and her employment.[3]

The firefighters contended, in part, at the workgroup meetings a heightened burden of proof for first responders to prove exposure to toxic substances is unwarranted because the dangerousness of certain substances has already been determined. The State Fire Marshal's office has published a list of toxic substances (Florida Substance List) that are hazardous and has required employers to notify fire departments of the existence of the toxic substance in the workplace.[4] By promulgating the Florida Substance List, the firefighters contend the State Fire Marshal's office has recognized the hazardous nature of the materials contained on the List and that these materials pose a particular hazard to firefighters exposed to the substances fires in a workplace or in a house. Thus, the firefighters argue it is illogical to make them prove by clear and convincing evidence their exposure to substances on the Florida Substance List caused the work-related injury. This standard requires proving the worker's specific exposure to the substance was toxic, and the exposure to the substance has already been determined to be toxic by the State Fire Marshal.

The bill provides an injury or disease caused by the exposure to a toxic substance is not an injury by accident arising out of employment unless there is a preponderance of evidence establishing that exposure to the specific substance to which the first responder was exposed at the exposure levels can cause the injury or disease sustained by the employee. In effect, this lowers the standard of proof for first responders to prove an injury caused by exposure to toxic substances to a preponderance of the evidence. Thus, other workers will be held to a higher standard of proof (i.e. clear and convincing evidence).

In cases involving occupational diseases, both causation and sufficient exposure to a specific substance must be shown to be present in the workplace to support causation and must be proven by a preponderance of evidence. This change in the law would appear to lower the standard for causation to a preponderance of evidence for first responders. All other workers must prove occupational disease by the higher clear and convincing standard.

The bill also provides a definition of the term "occupational disease." The bill provides that such term means "only a disease that is due to causes and conditions that are characteristic of and peculiar to a particular trade, occupation, process, or employment, and excludes all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public." This definition is modeled after the definition provided in Chapter 440, F.S.

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[3] Harris v. Joseph's of Greater Miami, 122 So.2d 561 (Fla. 1960).

[4] Rule 69A-62.004, F.A.C.

Attorney Fees

The third area of concern for first responders identified in the testimony to the workgroup was the limit on attorney fees imposed by chapter 2003-412, LOF. The 2003 legislation continued the use of the existing contingency fee schedule in awarding attorney's fees and eliminating the authorization for hourly fees in most cases. The fee for benefits secured are limited to 20 percent of the first $5,000 of benefits secured, 15 percent of the next $5,000 of benefits secured, 10 percent of the remaining amount of benefits secured to be provided during the first 10 years after the claim is filed, and 5 percent of the benefits secured after 10 years. Except for cases involving medical-only claims, the legislation eliminated the discretionary hourly fees. As an alternative to the contingency fee for medical-only claims, the judge of compensation claims may approve an attorney's fee not to exceed $1,500 once per accident, based on a maximum hourly rate of $150 per hour, if the judge of compensation claims determines that the contingency fee schedule, based on benefits secured, fails to compensate fairly the attorney.

The bill does not address attorney's fees for first responder workers' compensation cases. Thus, attorneys representing first responders in workers' compensation cases will not be paid on an hourly basis. Rather, they will be paid in accordance with the contingency fee schedule unless the claim is medical-only and the $1,500 attorney fee provision applies.

Psychiatric Injuries

Three issues relating to medical benefits for psychiatric injuries were addressed by stakeholders in the workgroup meetings. The first issue was the creation of s. 440.093, F.S., in the 2003 revision, which precludes medical treatment for a psychiatric injury unless it is accompanied by a physical injury requiring medical treatment. The second issue was the 1-percent permanent impairment rating cap for psychiatric injuries imposed by s. 440.15(3) (c), F.S. Prior to the 2003 revision, there was no limit on the permanent impairment rating for a psychiatric injury. The third issue was the limit on payment of temporary indemnity benefits for psychiatric injuries to 6 months after maximum medical improvement (MMI) is obtained for the injured worker's physical injuries.[5]

Prior to the enactment of the 2003 reforms, a mental or nervous injury due to stress, fright, or excitement only, did not qualify as an accidental injury and was not compensable and the law also required that a mental or nervous injury occurring as a manifestation of a compensable injury must be demonstrated by clear and convincing evidence.[6] Florida case law determined that a mental or nervous injury, even with a physical injury or accident, was not compensable unless the physical injury was the causal factor.[7] The Florida Supreme Court stated:

> For a mental or nervous injury to be compensable in Florida there must have been a physical injury. Otherwise, the disability would have been caused only by a mental stimulus, and must be denied coverage under the statutory exclusion. A mere touching cannot suffice as a physical injury.[8]

Subsequently, the Florida First District Court of Appeal held that eligibility for compensation for psychiatric injury resulting from compensable work-related physical injury required a finding by clear and convincing evidence that the mental or nervous injury was directly linked to the initial injury, not that the physical injury was the major contributing cause of the psychiatric injury.[9]

The 2003 legislation continued the mental nervous injury exclusions and the clear and convincing evidence standard noted above and codified case law that prohibited the payment of benefits for

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[5] s. 440.093(3), F.S.
[6] s. 440.02(1), F.S.
[7] City of Holmes Beach v. Grace, 598 So.2d 71 (Fla. 1989).
[8] Id.
[9] Cromartie v. City of St. Petersburg, 840 So.2d 372 (Fla. 1st DCA 2003).

mental or nervous injuries without an accompanying physical injury; however, the law also provided that the physical injury must require medical treatment.[10] Before the 2003 legislative changes, case law provided that the lack of medical treatment was relevant to whether or not a sufficient injury had been sustained. The 2003 act required the compensable physical injury be the major contributing cause of the mental or nervous injury.[11] The act also provided that a physical injury resulted from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable. It limited the duration of "temporary benefits" for a compensable mental or nervous injury to no more than six months after the employee reaches maximum medical improvement for the physical injury. In context, this six month limitation is understood to apply to the temporary disability benefits payable under s. 440.15, F.S., but not to medical benefits payable under s. 440.13, F.S. The act also placed a 1 percent limitation for permanent impairment benefits for psychiatric impairment. The permanent impairment benefit is based on the impairment rating schedule that provides the duration of the benefit is 3 weeks for each percent of impairment.

The bill does not address treatment for psychiatric injuries sustained by first responders. Thus, current law will apply to first responders sustaining psychiatric injuries as a result of a work related accident.

Independent Medical Examinations

Testimony was received at the workgroup meetings about the limit of one independent medical examination (IME) per employee per accident imposed by chapter 2003-412, LOF. Concern was also raised about that requirement in chapter 2003-412, LOF, that the employee pay for his or her IME. Prior to chapter 2003-412, LOF, the carriers paid for the injured worker's IMEs.

The bill does not address the IME issue for first responders. Thus, current law will govern IMEs by first responders and first responders will be limited to one IME per accident and will be required to pay for the IME.

Definition of First Responder

Current law provides no definition of the term "first responder." The bill proposes a definition of the term. Under the proposed definition, a first responder is a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.30, F.S., an emergency medical technician or paramedic as defined in s. 401.23, F.S., and a volunteer firefighter engaged in employment by the state or local government.

Smallpox Vaccination

At the first workgroup meeting, an Orange County Department of Health (Health Department) representative testified about the problems that may face first responders who take the smallpox vaccine. According to the statistics given by the Health Department in 2004, 3,942 people received the smallpox vaccination in Florida. In 2004, Florida ranked second among the nation in the total number of vaccinations given.

One problem faced by first responders vaccinated for smallpox is whether any adverse reaction they may have in response to the vaccination is compensable (i.e. in the course and scope of employment) and thus covered under workers' compensation. Representatives from the Health Department testified in 2004 that 14 of the 3,942 people vaccinated for smallpox in Florida have had adverse reactions to the vaccination. According to testimony received at the workgroup meetings, the law was not clear as to whether an adverse reaction to a smallpox vaccine is covered under workers' compensation. Section 440.09, F.S., provides that an employer must pay compensation or furnish under ch. 440, F.S., if the employee suffers an accidental compensable injury or death arising out of work performed in the scope and course of employment, but the law does not address smallpox vaccinations.

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[10] s. 440.093, F.S.

[11] Id.

In 2003, Congress created the Smallpox Vaccine Injury Compensation Program.[12] This program compensates law enforcement, firefighters, emergency medical personnel, and other public safety personnel for medical benefits, death benefits, and lost wages due to an adverse reaction to a smallpox vaccination. In order to be compensated under the program, the first responder must volunteer and be selected to serve as a member of a smallpox emergency response plan prior to an outbreak of smallpox. The program also provides medical, death, and lost-wage benefits to family members or others in contact with the vaccinated first responder who sustains a medical injury from exposure to the smallpox virus through physical contact with the vaccinated first responder. Any payments under the program are secondary to payments made or due from health insurance, workers' compensation, or any other entity. The program is administered by the U.S. Department of Health and Human Services and is subject to statutory filing deadlines.

The bill clarifies any uncertainty in the workers' compensation community regarding the compensability of an adverse reaction to a small pox vaccination by a first responder. The bill provides that any adverse medical condition to a first responder caused by a smallpox vaccination is a compensable workers' compensation injury.

C. SECTION DIRECTORY:

Section 1. Creates a new subsection in s. 440.091, F.S.; defines first responders; provides for the compensability of toxic substance exposure for first responders under certain circumstances proven by a preponderance of evidence; makes any medical complication incurred by a first responder as a result of a small pox vaccinations compensable; provides for the compensability of occupational disease cases by first responders under certain circumstances proven by a preponderance of evidence; provides for the continuation, after age 62, of permanent total supplement for first responders not in employment that participates in social security program; defines occupational disease.

Section 2. Expresses legislative intent that the bill fulfills an important state interest.

Section 3. Provides that the bill takes effect on October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill will impact counties and any entity that employs first responders. See the FISCAL COMMENTS section, below.

[12] Public Law 108-20, 117 Stat. 638 a/k/a The Smallpox Emergency Personnel Protection Act of 2003

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Permanent total disability supplemental benefits for first responders that were employed by a state or local government unit that did not participate in the social security program would be extended beyond age 62, regardless of whether their public employer provided an alternative retirement program. Under current law, generally permanent total disability benefits cease at age 75 and supplemental permanent total disability benefits end at age 62.

By lowering certain compensability standards for first responders for occupational diseases and toxic exposure, it is expected that first responders would likely prevail more often in those types of claims against their employers.

Any additional costs of funding workers' compensation coverage for state and local governments could be ultimately passed through to taxpayers. One method of passing the expense on to taxpayers is by raising taxes.

D. FISCAL COMMENTS:

The Department of Financial Services (DFS) indicates the legislation has no direct/fiscal impact on the Division of Workers' Compensation. The DFS indicates the bill will have little or no fiscal impact on The Risk Management Trust Fund.

The Office of Insurance Regulation (OIR) has stated that the legislation will have no regulatory or fiscal impact for the OIR.

According to the Department of Corrections, it employs 50 employees meeting the definition of first responder under the bill. All these employees are employed in the department's Inspector General's office and conduct internal investigations. The department believes the fiscal impact on it by these employees being covered under the bill is negligible.

The Department of Juvenile Justice opined it did not have any employees falling under the definition of first responder; thus the bill has no fiscal impact on this department.

NCCI estimates that costs for first responder classes would increase 3.8% ($8.2 million) if this proposal were enacted in its current form. The increased costs result from providing permanent total supplemental benefits after age 62 for some first responders (3.6% increase). The impact of allowing workers' compensation for adverse medical reactions to small pox vaccinations and of defining "occupational disease" as the bill does is negligible.

Individual self-insureds, primarily cities and counties, do not report data to NCCI and are not included in NCCI's estimate. The Florida League of Cities provides a self-insurance fund that some cities and some smaller counties participate in for workers' compensation. Other counties, such as Dade, Broward, Leon, and Polk, self insure, but do not participate in a self insurance fund.[13] Many of the sheriff's offices participate in a self insurance fund for workers' compensation.[14] NCCI's estimated 3.6% cost increase does not include the cost increases self insurers insuring first responders would incur. As a result, additional costs are expected from individual self-insureds that employ first responders. This includes a number of major governmental entities, including sheriff's offices, across the state.[15]

According to the Department of Management Services, it is possible that in-line-of-duty disability retirement experience could worsen for the "first responders" group, thereby producing actuarial losses

[13] Information received from a representative of the Florida Association of Counties.
[14] Id.
[15] National Council on Compensation Insurance, Inc., *ANALYSIS OF AMENDMENT TO FLORIDA HB 141 FOR FIRST RESPONDERS*, 12/5/05.

that would slowly emerge and be identified in future valuations and experience studies. If such costs occur, they would be funded through contribution rate increases as recommended in future valuations of the Florida Retirement System.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandate provision appears to apply because the bill requires counties or municipalities to expend funds; therefore, requiring a 2/3 vote of the membership of each house. The bill includes a statement of important state interest.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Insurance Committee heard the bill, adopted a strike-all amendment, and reported the bill favorably with a committee substitute. The strike-all amendment changed the bill as follows:

- Removed the bill's provisions relating to psychiatric benefits to first responders which, among other things, allowed first responders to receive psychiatric medical care without a physical touching and excluded first responders from the statutory limit relating to receipt of temporary indemnity and permanent impairment benefits.

- Removed the bill's provisions allowing hourly attorney's fees in some first responder cases.

The strike-all amendment maintained the following provisions in the bill:

- Definition of "first responder."

- Looser compensability standard of proof for first responders injured as a result of an occupational disease or exposure to a toxic substance.

- Definition of "occupational disease."

- Allowance for first responders to receive payment of PTD supplemental benefits after age 62 if the first responder's employer does not participate in Social Security.

- Allowance for first responders to receive workers' compensation benefits for an adverse reaction to a small pox vaccine.

The amendment also moved the statutory changes from chapter 112, F.S., to chapter 440, F.S., the workers' compensation chapter.

The staff analysis was updated to reflect the strike-all amendment.

CHAMBER ACTION

The Insurance Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to workers' compensation for first responders; amending s. 440.091, F.S.; providing a definition of the term "first responder"; providing a standard of proof for certain injuries and diseases in certain workers' compensation claims; providing that certain adverse results and complications are injuries by accident arising out of employment; providing for the continuation of permanent total supplemental benefits for certain first responders; providing a definition of the term "occupational disease"; providing legislative findings; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) is added to section 440.091, Florida Statutes, to read:

440.091 Law enforcement officer, firefighter, emergency medical technician, or paramedic; when acting within the course of employment.--

(4)(a) The term "first responder" as used in this subsection means a law enforcement officer as defined in s. 943.10, a firefighter as defined in s. 633.30, or an emergency medical technician or paramedic as defined in s. 401.23 employed by state or local government. A volunteer firefighter engaged by state or local government is also considered a first responder for purposes of this subsection.

(b) For the purpose of determining benefits under this chapter relating to employment-related accidents and injuries of first responders, the following shall apply:

1. An injury or disease caused by the exposure to a toxic substance is not an injury by accident arising out of employment unless there is a preponderance of the evidence establishing that exposure to the specific substance involved, at the levels to which the first responder was exposed, can cause the injury or disease sustained by the employee.

2. Any adverse medical condition caused by a smallpox vaccination of a first responder is deemed to be an injury by accident arising out of work performed in the course and scope of employment.

3. In cases involving occupational disease, both causation and sufficient exposure to a specific harmful substance shown to be present in the workplace to support causation shall be proven by a preponderance of the evidence.

(c) Permanent total supplemental benefits under s. 440.15(1)(f) received by a first responder whose employer does not participate in the social security program shall not terminate after the first responder attains the age of 62.

(d) For the purposes of this subsection, the term "occupational disease" means only a disease that is due to causes and conditions that are characteristic of and peculiar to a particular trade, occupation, process, or employment and excludes all ordinary diseases of life to which the general public is exposed, unless the incidence of the disease is substantially higher in the particular trade, occupation, process, or employment than for the general public.

Section 2. The Legislature finds that this act fulfills an important state interest.

Section 3. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 753 CS Homestead Tax Deferral
SPONSOR(S): Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 1268

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	9 Y, 0 N, w/CS	Monroe	Diez-Arguelles
2) Local Government Council	8 Y, 0 N	Camechis	Hamby
3) Fiscal Council		Monroe KDSM	Kelly
4)			
5)			

SUMMARY ANALYSIS

Section 197.252, F.S. allows qualified persons to defer payment of property taxes on homestead property until ownership of the property has changed. The amount of taxes which can be deferred depends on the age and household income of the person deferring the taxes. Under current law:

- Any person may defer that portion of their tax bill which exceeds 5 percent of their household income.
- A person 65 or older may defer that portion of their tax bill which exceeds 3 percent of their household income.
- A person 70 or older whose household income is $12,000 or under may defer their entire tax bill.
- Any person with a household income under $10,000 may defer their entire tax bill.

Under this bill, a person 65 or older whose household income qualifies them for the additional homestead exemption under s. 196.075, F.S. may defer their entire tax bill. In 2006, the maximum qualified income under this statute is $23,463.

In addition, the maximum interest rate which can be charged on a tax certificate for deferred taxes will be lowered from 9.5 percent to 7 percent.

The Revenue Estimating Conference has estimated that this bill will have a negative recurring impact of $1.1 million on local revenues.

This bill has an effective date of January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the house principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 197.252, F.S., allows people to defer payment of property taxes on homestead property until ownership of the property has changed. Under current law:

- Any person may defer that portion of their tax bill which exceeds 5 percent of their household income.
- A person 65 or older may defer that portion of their tax bill which exceeds 3 percent of their household income.
- A person 70 or older whose household income is $12,000 or under may defer their entire tax bill.
- Any person with a household income under $10,000 may defer their entire tax bill.

Under this program, payment of both ad valorem taxes and some non ad-valorem assessments may be deferred. Taxes cannot be deferred if the value of the primary mortgage is greater than 70 percent of the just value of the property or if all unsatisfied debt on the property, including deferred taxes, exceeds 85 percent of the just value of the homestead.

A tax certificate is issued to the county for any taxes deferred under this statute. The county then holds these certificates until such time as the taxes become due and payable. These taxes become due and payable if ownership or use of the homesteaded property changes or if all unsatisfied liens on the property grow to an amount which exceeds 85% of the property's just value.

During the time the county holds the certificates, interest is accrued at a rate of "0.5 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of the deferred payment tax certificates; however, the interest rate may not exceed 9.5 percent."[1] In 2005 this interest rate was 5.59 percent.

Proposed Changes

Under this bill, the payment of the entire tax bill could be deferred by individuals who are 65 or older and have a household income that would qualify them for the additional homestead exemption for low income seniors, governed by s. 196.075, F.S., which reads:

> (2) . . . .any person . . . who has attained age 65, and whose household income does not exceed $20,000.

[1] s. 197.262(2), F.S.

(3) Beginning January 1, 2001, the $20,000 income limitation shall be adjusted annually, on January 1, by the percentage change in the average cost-of-living index in the period January 1, through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is the average of the monthly consumer-price-index figures for the state 12-month period, relative to the United States as a whole, issued by the United States Department of Labor.

In 2006, the maximum qualified income under this statute is $23,463.

Thus, if this bill passes, the amount of taxes which may be deferred by an individual would change so that:

- Any person may defer that portion of their tax bill which exceeds 5 percent of their household income.
- A person 65 or older may defer that portion of their tax bill which exceeds 3 percent of their household income.
- A person 65 or older whose household income qualifies them for the additional homestead exemption under s. 196.075, F.S., may defer their entire tax bill.
- Any person with a household income under $10,000 may defer their entire tax bill.

In addition, the maximum interest rate which can be charged on a tax certificate for deferred taxes will be lowered from 9.5 percent to 7 percent.

C. SECTION DIRECTORY:

Section 1. Amends s. 197.252, F.S., changing the eligibility criteria for participating in the tax deferral program.

Section 2. Provides that the bill shall take effect January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

Revenues: The Revenue Estimating Conference has estimated that this bill will have a $1.1 million recurring impact on local revenues.

1. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will allow qualified low income seniors to defer the payment of their property taxes allowing them another option in managing their financial needs.

D. FISCAL COMMENTS: None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision of the State Constitution is not applicable because: this bill does not require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other: None

B. RULE-MAKING AUTHORITY: Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 10, 2006, the Finance and Tax Committee adopted a strike everything amendment to the bill. The amendment reworded the bill to conform to the language of its Senate companion. In addition, the amendment lowered the maximum interest rate which can be charged on a tax certificate for deferred taxes from 9.5 percent to 7 percent.

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the deferral of ad valorem property taxes; amending s. 197.252, F.S.; decreasing the age and increasing the income threshold required for eligibility to defer ad valorem property taxes; decreasing the maximum interest rate that may be charged on deferred ad valorem taxes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (b) of subsection (2) and subsection (4) of section 197.252, Florida Statutes, are amended to read:

197.252 Homestead tax deferral.--

(2)

(b) If ~~In the event~~ the applicant is entitled to claim the increased exemption by reason of age and residency as provided in s. 196.031(3)(a), approval of such application shall defer that portion of such ad valorem taxes plus non-ad valorem assessments which exceeds 3 percent of the applicant's

household's income for the prior calendar year. If any such applicant's household income for the prior calendar year is less than $10,000, or is less than the amount of the household income designated for the additional homestead exemption pursuant to s. 196.075 and the ~~$12,000 if such~~ applicant is 65 ~~70~~ years of age or older, approval of the ~~such~~ application shall defer such ad valorem taxes plus non-ad valorem assessments in their entirety.

(4) The amount of taxes, non-ad valorem assessments, and interest deferred pursuant to this act shall accrue interest at a rate equal to the semiannually compounded rate of one-half of 1 percent plus the average yield to maturity of the long-term fixed-income portion of the Florida Retirement System investments as of the end of the quarter preceding the date of the sale of the deferred payment tax certificates; however, the interest rate may not exceed 7 ~~9.5~~ percent.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 353 CS Increased Homestead Exemption
SPONSOR(S): Lopez-Cantera and others
TIED BILLS: **IDEN./SIM. BILLS:** HB 7261

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	5 Y, 3 N, w/CS	Monroe	Diez-Arguelles
2) Local Government Council	8 Y, 0 N, w/CS	Camechis	Hamby
3) Fiscal Council		Monroe KDSM	Kelly CK
4)			
5)			

SUMMARY ANALYSIS

This joint resolution proposes amendments to the Florida Constitution to increase the current homestead exemption from $25,000 to $50,000 phased in over five years. Thus, the homestead exemption is increased to $30,000 in 2007; $35,000 in 2008; $40,000 in 2009; $45,000 in 2010; and $50,000 in 2011. Thereafter, the homestead exemption increases by the percentage change in the Consumer Price Index. The proposed amendment also increases the discretionary homestead exemption for senior citizens from $25,000 to $50,000 effective in 2007.

The proposed amendment specifies that homestead exemption increases take effect January 1, 2007 if the amendment is adopted by the voters.

The Revenue Estimating Conference has not reviewed the provisions of this bill. However, the Revenue Estimating Conference did estimate that raising the homestead exemption to $50,000, without the phase in provisions and assuming millage rates remain the same, would have a maximum fiscal impact of negative $2.2 billion to local revenues in 2009-2010. The Revenue Estimating Conference has also considered the fiscal impact of doubling the discretionary homestead exemption available to low income seniors. If all counties were to fully implement the increased exemption and millage rates were to remain the same, this provision could have an impact of negative $36 million to local revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Lower Taxes – This joint resolution proposes an amendment to the State Constitution to increase the homestead exemption from $25,000 to $50,000 over a five year period, decreasing the amount of ad valorem taxes paid by owners of homesteads. The proposed amendment also increases the discretionary homestead exemption for senior citizens from $25,000 to $50,000.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Property Taxation in Florida

The ad valorem tax or "property tax" is an annual tax levied by local governments based on the value of real and tangible personal property as of January 1 of each year. The taxable value of real and tangible personal property is the fair market value of the property adjusted for any exclusions, differentials, or exemptions. Tax bills are mailed in November of each year based on the previous January 1st valuation and payment is due by the following March 31.

Ad valorem tax continues to be a major source of revenue for local governments in Florida. In FY 2002-03 (the last year for which certain fiscal information is available) property taxes constituted 31 percent of county governmental revenue ($6.3 billion)[1], and 17 percent of municipal governmental revenue ($2.5 billion), making it the largest single source of tax or general revenue for general purpose governments in Florida. In addition, the property tax is the primary local revenue source for school districts. In FY 2003-04, school districts levied $8.4 billion in property taxes for K-12 education.[2]

The property tax is important not only because of the revenue it generates, but because it is the only taxing authority not preempted by the Florida Constitution to the state.[3] However, the property tax is not an unlimited source of revenue. The Florida Constitution caps the millage rates assessed against the value of the property.[4] In addition, the Florida Constitution grants property tax relief in the form of valuation differentials,[5] assessment limitations,[6] and exemptions,[7] including the homestead exemptions.

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[1] Information provided by the Legislative Committee on Governmental Relations (LCIR), from the LCIR database at http://fcn.state.fl.us/lcir/cntyfiscal/corevprofsw.xls.

[2] *See* 2005 Florida Tax Handbook, p. 135.

[3] *See* Art. VII, s. 1, Fla. Const.

[4] *See* Art. VII, s. 9, Fla. Const. For counties, municipalities, and school districts, the cap is 10 mills. The millage rate for water management districts is capped at 1 mill, except that it is 0.05 mills for the Northwest Florida Water Management District. The millage rate for other special districts is as established by law. A mill is defined as 1/1000 of a dollar, or $1 per $1000 of taxable value.

[5] Article VII, s. 4 of the Florida Constitution, authorizes valuation differentials, which are based on character or use of property, such as agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes. This section also provides that tangible personal property that is held as inventory may also be assessed at a specified percentage of its value or totally exempted. Additionally, counties and cities are authorized to assess historical property based solely on the basis of its character or use.

[6] Article VII, s. 4(c) of the Florida Constitution, authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead

Homestead Exemption

The provision which is commonly referred to as the Homestead Exemption, is contained in Article VII, s. 6(a-d) of the Florida Constitution, which provides a $25,000 homestead exemption for all owners of homestead property provided that the tax roll in their county has been approved. The $25,000 amount was established in 1982. If the amount of the homestead exemption had been increased by the percentage change in the Consumer Price Index since 1982, the current value of the Homestead Exemption would be $50,596.

In addition, Article VII, s. 6(f) of the Florida Constitution, authorizes the Legislature to allow counties or municipalities, by ordinance, for the purpose of their respective tax levies, to grant an additional homestead tax exemption of up to $25,000 to resident homeowners who are 65 years of age whose household income, as defined by general law, does not exceed $20,000, adjusted for inflation. This is typically referred to as the Increased Homestead Exemption for Low Income Seniors.

Finally, Article VII, s. 6(e) of the Florida Constitution authorizes the Legislature to provide renters who are permanent residents ad valorem tax relief on all ad valorem tax levies. However, this provision has been minimally implemented.[8]

In addition, the courts have ruled that property of the federal government, the state, and the counties is immune from, or not subject to, taxation.[9] The courts have further ruled that this immunity extends to property of school districts[10] and certain special districts.[11]

In tax year 2006, the combination of these various forms of property tax relief is estimated to effectively reduce the taxable value of real property in this state by 31.9 percent.[12] For the

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property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the "Granny Flats" assessment limitation. The statutes also provide for differential treatment of specific property, to include pollution control devises (s. 193.621, F.S.) and building renovations for the physically handicapped (s. 193.623, F.S.).

[7] Article VII, s. 3 of the Florida Constitution, provides authority for the following property tax exemptions:

- All property owned by a municipality and used exclusively by it for municipal or public purposes;
- Portions of property used predominantly for educational, literary, scientific, religious or charitable purposes, as provided in general law;
- Household goods and personal effects, not less than one thousand dollars;
- Property owned by a widow or widower or person who is blind or totally and permanently disabled, not less than five hundred dollars, as provided in general law;
- Property used for community and economic development, by local option and as defined by general law;
- Certain renewable energy source devices and real property on which the device is installed and operated; and
- Historic properties, by local option and as defined by general law.

The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

[8] This $25,000 exemption is implemented in ss. 196.1975(9)(a) and 196.1977, F.S., for certain units in non-profit homes for the aged and certain proprietary continuing care facilities.

[9] *See Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571 (Fla. 1957); *Orlando Utils. Comm'n v. Milligan*, 229 So. 2d 262 (Fla. 4th DCA 1969); and *Dickinson v. City of Tallahassee,* 325 So. 2d 1 (Fla. 1975).

[10] *See Dickinson v. City of Tallahassee*, 325 So. 2d 1 (Fla. 1975).

[11] *See Sarasota-Manatee Airport Auth. v. Mikos,* 605 So. 2d 132 (Fla. 2d DCA 1992). *Cf. Canaveral Port Auth. V. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996).

2006 tax year, it is estimated that at an aggregate average millage rate of 19.54, the tax revenue loss due to these forms of property tax relief will be $1.1 billion for agricultural and other valuation differentials; $6.7 billion for the "Save Our Homes" assessment limitation; and $2.2 billion for the $25,000 homestead exemption.[13]

Any additional reduction in the property tax base could result in a corresponding shift in property tax burden to other property tax owners.[14]

EFFECT OF PROPOSED CHANGES

The proposed amendment increases the current homestead exemption from $25,000 to $50,000 phased in over five years. Thus, the homestead exemption is increased to $30,000 in 2007; $35,000 in 2008; $40,000 in 2009; $45,000 in 2010; and $50,000 in 2011. Thereafter, the homestead exemption increases by the percentage change in the Consumer Price Index. The proposed amendment also increases the discretionary homestead exemption for senior citizens from $25,000 to $50,000 effective in 2007.

The proposed amendment creates new Section 26 of Article XII, State Constitution, which provides that the revisions take effect January 1, 2007 if the amendment is adopted by the voters.

C. SECTION DIRECTORY: Not Applicable

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures:

	Non-Recurring	FY 2006-07
	Department of State Publications Costs[15]	$50,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The Revenue Estimating Conference has not reviewed the provisions of this bill. However, the Revenue Estimating Conference did estimate that raising the homestead exemption to $50,000, without the phase in provisions and assuming millage rates remain the same, would have a maximum fiscal impact of negative $2.2 billion to local revenues in 2009-2010. The Revenue Estimating Conference has also considered the fiscal impact of doubling the discretionary homestead exemption available to low income

[12] 2006 estimates are $ 2,148.5 billion in just value, and $ 1,463.4 billion in taxable value. Revenue Estimating Conference, Ad Valorem Estimating Conference, March 6, 2006. See EDR website at http://edr.state.fl.us/conferences/advalorem/adval0306.pdf

[13] *See* 2005 Florida Tax Handbook, p. 137-8.

[14] Generally, local governments respond to reductions in the property tax base in one of three ways: decrease their budgets, replace the lost revenue with other sources of revenue, or increase the millage rate on the remaining taxable property.

[15] *See* Art. XI, Sec. 5(d), Fla. Const.

seniors. If all counties were to fully implement the increased exemption and millage rates were to remain the same, this provision could have an impact of negative $36 million to local revenues.

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: This bill will reduce the property tax burden on owners of homestead property by increasing the amount of the homestead tax exemption; however, this reduction may result in a shift of tax burden from homestead property owners to other taxpayers.

D. FISCAL COMMENTS:

Article XI, s. 5(d) of the State Constitution requires the state to publish the proposed amendment along with notice of the date of the election at which it will be submitted before electors in one newspaper in each county in which a newspaper is published once in the tenth week and once in the sixth week immediately preceding the week the election is held. The Division of Elections estimates this cost to be approximately $50,000 to meet the requirements of this provision.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provision is not applicable to Joint Resolutions.

2. Other: Article XI, s. 1 of the Florida Constitution, provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

B. RULE-MAKING AUTHORITY: None

C. DRAFTING ISSUES OR OTHER COMMENTS: None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 31, 2006, the Committee on Finance and Tax adopted a strike-everything amendment to the bill. This analysis reflects that amendment. As originally drafted, this bill simply raised the homestead exemption from $25,000 to $50,000, without phasing in the exemption.

On April 11, 2006, the Local Government Council adopted a strike-all amendment to the joint resolution to delete all proposed revisions to the Save Our Homes constitutional provision, provide for a five-year phase in period for the increased homestead exemption rather than a ten-year phase in period, and to provide for an immediate increase in the discretionary homestead exemption for senior citizens from $25,000 to $50,000.

CHAMBER ACTION

The Local Government Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of Section 26 of Article XII of the State Constitution to provide for a phased increase in the homestead exemption over 5 years from $25,000 to $50,000 for all levies, increase the maximum additional homestead exemption for low-income seniors from $25,000 to $50,000, and schedule the amendment to take effect January 1, 2007, if adopted.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 6 of Article VII and the creation of Section 26 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.--

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c)(1) By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts ~~twenty-five thousand dollars~~ of the assessed value of the real estate for each school district levy: thirty thousand dollars with respect to 2007 assessments; thirty-five thousand dollars with respect to 2008 assessments; forty thousand dollars with respect to 2009 assessments; forty-five

thousand dollars with respect to 2010 assessments; and fifty thousand dollars with respect to 2011 assessments. In 2012 and each year thereafter, the exemption shall increase annually by the percentage change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) By general law and subject to conditions specified therein, the exemption for all other levies may be increased up to an amount not exceeding ten thousand dollars of the assessed value of the real estate if the owner has attained age sixty-five or is totally and permanently disabled and if the owner is not entitled to the exemption provided in subsection (d).

(d) By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts of assessed value of real estate for each levy other than those of school districts: thirty ~~fifteen~~ thousand dollars with respect to 2007 ~~1980~~ assessments; thirty-five ~~twenty~~ thousand dollars with respect to 2008 ~~1981~~ assessments; forty ~~twenty-five~~ thousand dollars with respect to 2009 assessments; forty-five thousand dollars with respect to 2010 assessments; and fifty thousand dollars with respect to 2011 assessments. In 2012 ~~for 1982~~ and each year thereafter, the exemption shall increase annually by the percentage change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United

States Department of Labor, Bureau of Labor Statistics. However, such increase shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This subsection shall stand repealed on the effective date of any amendment to section 4 which provides for the assessment of homestead property at a specified percentage of its just value.

(e) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(f) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding fifty ~~twenty-five~~ thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

ARTICLE XII

SCHEDULE

SECTION 26. Increased homestead exemption.--The amendment to Section 6 of Article VII, increasing the amount of the homestead exemption, shall take effect January 1, 2007.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 6

ARTICLE XII, SECTION 26

INCREASE IN HOMESTEAD EXEMPTION.--Proposing amendment of the State Constitution to provide for a phased increase in the homestead exemption from $25,000 to $50,000 over 5 years for all levies, school districts or otherwise; increase the maximum additional homestead exemption for low-income seniors from $25,000 to $50,000; and schedule the amendment to take effect January 1, 2007, if adopted.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29 CS Tax on Sales, Use, and Other Transactions
SPONSOR(S): Sansom and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 692

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	8 Y, 1 N, w/CS	Levin	Diez-Arguelles
2) Fiscal Council		Levin	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill provides that no sales tax will be collected: (1) on the sale of books, clothing, wallets, or bags including handbags, backpacks, fanny packs, and diaper bags, having a selling price of $50 or less; or, (2) on the sale of school supplies having a selling price of $10 or less during the nine-day period of July 23 through July 31 of 2006.

Specifically, the bill:

- defines "books" as a set of printed sheets bound together and published in a volume;
- excludes from the definition of "book" newspapers, magazines, or other periodicals,
- defines "clothing" to mean any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body;
- excludes from the definition of "clothing" watches, watchbands, jewelry, umbrellas, or handkerchiefs;
- defines "school supplies" to mean pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer discs, protractors, compasses, and calculators;
- provides that the provisions of the Act do not apply within theme parks, public lodging establishments, and airports; and
- provides specific rule-making authority to the Department of Revenue to adopt rules to implement the Act.

The bill provides an appropriation to the Department of Revenue of $210,540 in FY 2006-07 to administer the bill.

The fiscal impact of the bill is expected to be approximately negative ($32.1 million) in state revenues and negative ($7.2 million) in total local revenues during FY 2006-07.

The estimated reduction in Local Option Sales tax by this bill is a negative ($3.1 million). The bill therefore reduces the authority of cities and counties to raise revenues in the aggregate and is a mandate to local governments. The Florida Constitution therefore requires a 2/3 vote of the membership of each house of the Legislature.

The bill is effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes - The bill eliminates the sales tax on many back-to-school items during the period of the sales tax holiday, which will be the last nine days of July 2006.

B. EFFECT OF PROPOSED CHANGES:

Current Law:

Section 212.05, Florida Statutes, provides that a sales and use tax be imposed on the retail sale, storage, or use of tangible personal property. The sales tax rate is 6%. Chapter 212, Florida Statutes, also lists items and transactions that are exempt from sales and use tax. Under current law, the retail sale of clothing, wallets, bags, and school supplies is subject to sales tax.

History of Sales Tax Holidays:

Chapter 98-341, Laws of Florida, the Florida Family Tax Relief Act of 1998, provided that apparel, including footwear, with a taxable value of $50 or less, was exempt from the imposition of sales tax during the period from 12:01 a.m., August 15, 1998, through midnight, August 21, 1998. The Act defined "clothing" to mean any article of wearing apparel, including footwear, intended to be worn on or about the human body. For purposes of the Act, "clothing" did not include watches, watchbands, jewelry, handbags, handkerchiefs, umbrellas, scarves, ties, headbands, or belt buckles.

Chapter 99-229, Laws of Florida, the Florida Residents' Tax Relief Act of 1999, created an exemption from sales tax for clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of $100 or less during the period from 12:01 a.m., July 31, 1999, through midnight, August 8, 1999. The tax-free week was earlier in 1999 than in 1998 to allow families shopping for school clothing an opportunity to take advantage of tax savings prior to the start of the school year. An appropriation of $200,000 was provided to the Department of Revenue to administer the Act in 1999.

Chapter 2000-175, Laws of Florida, the Florida Residents' Tax Relief Act of 2000, created an exemption from sales tax for clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of $100 or less during the period from 12:01 a.m., July 29, 2000, through midnight, August 6, 2000. An appropriation of $215,000 was provided to the Department of Revenue to administer the Act in 2000.

Chapter 2001-148, Laws of Florida, the Florida Residents' Tax Relief Act of 2001, created an exemption from sales tax during the period from 12:01 a.m., July 28, 2001, through midnight, August 5, 2001, for: 1) clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of $50 or less; and 2) school supplies having a taxable value of $10 or less per item. An appropriation of $200,000 was provided to the Department of Revenue to administer the Act in 2001.

Chapter 2004-73, Laws of Florida, created an exemption from sales tax for books, clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, having a selling price of $50 or less or upon school supplies having a selling price of $10 per item or less during the nine-day period of July 24 through August 1, 2004.

Chapter 2005-271, Laws of Florida, created an exemption from sales tax for books, clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, having a selling price of $50 or less or upon school supplies having a selling price of $10 per item or less during the nine-day period of July 23 through July 31, 2005.

Proposed Changes:

The bill provides that no sales tax will be collected upon books, clothing, wallets or bags, including handbags, backpacks, fanny packs, and diaper bags having a selling price of $50 or less per item, or upon school supplies having a selling price of $10 per item or less during the nine day period of July 23 – July 31, 2006:

- defines "clothing" to mean any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body;
- excludes from the definition of "clothing" watches, watchbands, jewelry, handkerchiefs, and umbrellas;
- defines "school supplies" to mean pens, pencils, erasers, crayons, notebooks, paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer discs, protractors, compasses, and calculators;
- provides that the provisions of the Act do not apply theme parks, public lodging establishments, and airports; and
- provides specific rule-making authority to the Department of Revenue to adopt rules to implement the Act.

C. SECTION DIRECTORY:

Section 1. Creates a nine-day period of July 23 through July 31, 2006 during which clothing, wallets, bags, and school supplies are exempt from sales tax. The section defines the terms "books," "clothing" and "school supplies" and provides an exception for certain types of establishments. The section provides rulemaking authority to the Department of Revenue.

Section 2. Provides an appropriation of $210,540 to the Department of Revenue to administer the Act.

Section 3. Provides the Act is effective July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	FY 2006-2007
General Revenue	($32.0 m)
Solid Waste Management Trust Fund	($.1 m)
Total State Impact	($32.1 m)

2. Expenditures: The bill contains an appropriation of $210,540 from the General Revenue Fund to the Department of Revenue for the administration of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	FY 2006-2007
Revenue Sharing	($1.0m)
Local Gov't half-cent	($3.1m)
Local Option	($3.1m)
Total local impact	($7.2m)

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Retailers selling the items exempt from sales tax during the holiday may experience an increase in sales and sales volume as a result of the tax holiday.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The estimated reduction in the Local Option Sales Tax by this bill is $3.1 million. The bill therefore reduces the authority of cities and counties to raise revenues in the aggregate. and is a mandate to local governments. The Florida Constitution therefore requires a 2/3 vote of the membership of each house of the Legislature.

2. Other: None

B. RULE-MAKING AUTHORITY:

The Department of Revenue is authorized to adopt rules to implement the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Both the Department of Revenue and the retail industry have suggested that the tax holiday include two weekends in the nine days, which is usually the case.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 24, 2006, the Finance & Tax Committee adopted one amendment which changed the appropriation to the Department of Revenue to administer the bill from $206,000 to $210,540. The change in cost is the increase in first class postage from 37 cents to 39 cents.

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to tax on sales, use, and other transactions; specifying a period during which the sale of books, clothing, and school supplies shall be exempt from such tax; providing definitions; providing exceptions; authorizing the Department of Revenue to adopt rules; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) No tax levied under the provisions of chapter 212, Florida Statutes, shall be collected on the sale of:

(a)1. Books, clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of $50 or less per item during the last 9 days of July 2006.

2. As used in this paragraph, the term:

a. "Book" means a set of printed sheets bound together and published in a volume. For purposes of this paragraph, the term "book" does not include newspapers, magazines, or other periodicals.

b. "Clothing" means any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body. For purposes of this paragraph, the term "clothing" does not include watches, watchbands, jewelry, umbrellas, or handkerchiefs.

(b)1. School supplies having a sales price of $10 or less per item during the last 9 days of July 2006.

2. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

(2) This section does not apply to sales within a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s. 330.27(2), Florida Statutes.

(3) Notwithstanding chapter 120, Florida Statutes, the Department of Revenue may adopt rules to carry out this section.

Section 2. The sum of $210,540 is appropriated from the General Revenue Fund to the Department of Revenue for purposes of administering section 1.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 69 CS Exemptions from the Tax on Sales, Use, and Other Transactions
SPONSOR(S): Meadows and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	9 Y, 0 N, w/CS	Noriega	Diez-Arguelles
2) Economic Development, Trade & Banking Committee	10 Y, 0 N	Olmedillo	Carlson
3) Fiscal Council		Noriega	Kelly
4)			
5)			

SUMMARY ANALYSIS

The bill broadens an existing sales tax exemption for industrial machinery and equipment purchased for use in an expanding facility engaged in spaceport activities or for use in an expanding manufacturing facility. The bill eliminates a requirement that the business pay the first $50,000 in sales taxes per calendar year on these types of purchases before the exemption applies. The effect of the bill is to provide a full, rather than partial, sales tax exemption for industrial machinery and equipment purchases when the business can demonstrate that the items will be used to increase productive output at the facility by at least 10 percent.

The bill also broadens an existing sales tax exemption for machinery and equipment purchased for use by new or expanding solid minerals, mining, or processing operations. Under current law, this exemption can only be taken as a credit against severance taxes due and the taxpayer must demonstrate the creation of a certain number of jobs. The bill removes these two requirements, placing these types of businesses in the same position as other new and expanding manufacturers.

In addition, this bill broadens an existing sales tax exemption for machinery and equipment purchased by an expanding business pursuant to federal procurement regulations by eliminating a requirement that the business pay the first $100,000 in sales tax per calendar year on these types of purchases before the exemption applies.

Finally, the bill provides Legislative findings and purpose about the importance of a competitive manufacturing business climate in Florida, including: the development of free-trade agreements with the Americas; the potential to add thousands of well-paying jobs in the state; to secure Florida's place in emerging markets in the world marketplace; and that with the potential for increasing exports, an investment in manufacturing today will mean significant long-term positive economic benefits to the state tomorrow.

The Revenue Estimating Conference has estimated that this bill will have a negative fiscal impact of $19.7 million to state government and $4.4 million to local governments in FY 2006-07, and of $21.4 million to state government and $4.7 million to local governments in FY 2007-08.

The bill has an effective date of July 1, 2006.

The bill provides an appropriation of $210,069 from the General Revenue Fund and four positions are authorized to the Department of Revenue.

This bill appears to be a mandate that requires a two-thirds vote of the membership of each house to pass.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill eliminates the sales tax paid on the purchase of machinery and equipment by expanding businesses.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of taxes on sales, use, and other transactions. This chapter also contains provisions for sales and use tax exemptions and credits applicable to certain items and under certain circumstances.

Industrial machinery and equipment purchased for exclusive use by a *new* business in spaceport activities or for use in a *new* business that manufactures, processes, compounds, or produces for sale items of tangible property at a fixed location are exempt from the tax imposed by ch. 212, F.S.[1] To avail itself of the exemption, a business must demonstrate to the Department of Revenue (DOR) that the machinery and equipment are used in this state. Additionally, a new business must purchase the machinery or equipment before the date the business initially begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

A similar, but partial, sales tax exemption is provided for industrial machinery and equipment used exclusively by an *expanding* facility that is engaged in spaceport activities or used in an *expanding* manufacturing facility that manufactures, processes, compounds, or produces for sale items of tangible personal property at a fixed location in this state. In these cases, however, the exemption applies to tax amounts in excess of $50,000 per calendar year on machinery and equipment purchases. Also, industrial machinery and equipment purchased by an expanding business pursuant to federal procurement regulations is exempt from sales tax in excess of $100,000 per calendar year.[2] In order for the exemption to apply to these expanding businesses, the businesses must demonstrate that the machinery and equipment are used to increase productive output by at least 10 percent.[3]

Machinery and equipment purchased for use in phosphate or other solid minerals severance, mining, or processing operations are entitled to the new or expanded business exemptions only by way of a credit against phosphate taxes paid.[4] In addition, in order to qualify for the exemption, a new mining business must create at least 100 new jobs in Florida; an expanding mining business with less than 2,500 jobs must increase the number of Florida jobs by at least 5 percent; and an expanding mining business with more than 2,500 jobs must increase the number of Florida jobs by at least 3 percent.[5]

When the industrial machinery and equipment are purchased for use in an expanding printing manufacturing facility, the $50,000 threshold does not apply, and the taxpayer does not have to pay any sales tax amounts related to the purchases.[6]

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[1] Section 212.08(5)(b)1., F.S. The term "spaceport activities" refers to activities directed or sponsored by the Florida Space Authority on spaceport territory through its power and duties under the Florida Space Authority Act (s. 212.02(22), F.S.).
[2] Section 212.08(5)(d), F.S.
[3] Section 212.08(5)(b)2.a., F.S.
[4] Section 212.08(5)(b)5., F.S.
[5] Section 212.0805, F.S.
[6] Section 212.08(5)(b)2.b., F.S.

To receive these exemptions, qualifying businesses must apply to DOR for temporary tax exemption permits. A business must maintain all books and records to support the exemption. DOR, upon an audit which determines that the business does not meet the criteria for the exemption, shall immediately collect from the business the amount of taxes exempted plus interest and any penalty.[7]

The term "industrial machinery and equipment" refers to "tangible personal property or other property that has a depreciable life of 3 years or more and that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities."[8]

Proposed Changes

This bill provides that this act may be cited as the "Florida Manufacturing Global Competitiveness Act." The bill revises the existing sales and use tax exemption for industrial machinery and equipment purchased for exclusive use in an expanding facility that is engaged in spaceport activities or for use in an expanding manufacturing facility, by removing a limitation in the current law that the exemption applies solely to tax amounts above $50,000 per calendar year. The bill also removes the $100,000 threshold applicable to purchases of machinery and equipment pursuant to federal procurement regulations. The bill retains the requirement that the taxpayer demonstrate that the machinery and equipment will be used to increase productive output by at least 10 percent at the facility.

The bill removes the requirement that businesses involved in mining operations can only take the exemption as a credit against phosphate taxes due and repeals the requirement for job creation applicable to mining operations.

By eliminating the $50,000 threshold on the spaceport and the general manufacturing exemption, the bill has the effect of making a separately stated and specific exemption for printing manufacturing facilities redundant, as these printing facilities would now be captured within the general manufacturing exemption. Therefore, the bill deletes from current law the separately-stated and specific exemption for printing manufacturing facilities codified in s. 212.08(5)(b)2.b., F.S.

This bill also provides legislative findings and purpose about the importance of a competitive manufacturing business climate in Florida.

The bill has an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Provides that this act may be cited as the "Florida Manufacturing Global Competitiveness Act."

Section 2. Provides legislative findings and purpose.

Section 3. Amends s. 212.08, F.S., relating to sales tax exemptions for machinery and equipment.

Section 4. Repeals s. 212.0805, F.S., relating to the number of jobs that have to be created by a new or expanding mining operation in order to be entitled to a sales tax exemption.

Section 5. Appropriates $210,069 from the General Revenue Fund, and authorizes four positions to the Department of Revenue to implement the provisions of the act during FY 2006-07.

Section 6. Provides an effective date of July 1, 2006.

[7] Section 212.08(5)(b)3.a.-c., F.S.
[8] Section 212.08(5)(b)6.a., F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	(19.7m)	(21.3m)
State Trust	(Insignificant)	(0.1m)
Total	(19.7m)	(21.4m)

2. Expenditures:

The bill provides an appropriation of $210,069 from the General Revenue Fund and four positions are authorized to DOR. Of the funds provided, $191,825 are recurring and $18,244 are nonrecurring.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	(0.6m)	(0.7m)
Local Gov't. Half Cent	(1.9m)	(2.0m)
Local Option	(1.9m)	(2.0m)
Total Local Impact	(4.4m)	(4.7m)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses engaged in certain activities that purchase industrial machinery and equipment to expand productive output by 10 percent will not be subject to any sales tax on the purchase of such equipment.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill will reduce the authority of counties to raise revenues in the aggregate through local option sales taxes by $1.9 million, as estimated by the Revenue Estimating Conference. As such, the mandates provision appears to apply to this bill and it does not seem to qualify for an exemption. Therefore, the bill should have a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR recommends technical amendments that revise the definition of "productive output," and that add definitions for "new business," and "expanding business" or "expanding facility."

In addition, DOR recommends an increase in the appropriation required to fund its four authorized positions. The recurring costs for these positions are now estimated to be $203,574, and the nonrecurring costs are now estimated to be $19,372. This reflects a total increase of $12,877 over the appropriation listed in the bill.

DOR also recommends changing the effective date to January 1, 2007, which will allow DOR sufficient time to properly inform all affected taxpayers about the changes in the exemptions.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Finance and Tax Committee adopted an amendment to the bill. The amendment added that this act may be cited as the "Florida Manufacturing Global Competitiveness Act." In addition, the amendment provided legislative findings and purpose, which address the importance of a competitive manufacturing business climate in Florida.

This analysis reflects the changes contained in the amendment adopted by the Finance and Tax Committee.

CHAMBER ACTION

The Finance & Tax Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to exemptions from the tax on sales, use, and other transactions; providing a short title; providing legislative findings and purpose; amending s. 212.08, F.S.; deleting an annual limitation on an exemption from the sales tax for certain machinery and equipment used to increase productive output; deleting an exemption for machinery and equipment used to expand certain printing manufacturing facilities or plant units; deleting a limitation on application of the exemption for machinery and equipment purchased for use in phosphate or other solid minerals severance, mining, or processing operations by way of a prospective credit; deleting an annual limitation on an exemption from the sales tax for certain machinery and equipment purchased under a federal procurement contract; repealing s. 212.0805, F.S., relating to qualifications for the exemption and credit for machinery and equipment purchased by an expanding business for use in phosphate or other solid minerals

severance, mining, or processing operations; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title.--This act may be cited as the "Florida Manufacturing Global Competitiveness Act."

Section 2. Legislative findings and purpose.--The Legislature finds that a competitive manufacturing business climate is important given that the manufacturing sector contributes significantly to the economy of this state, helping the state to weather natural and manmade disasters; that the development of free trade agreements with the Americas will allow the state to be the gateway to increased international trade that will expand the opportunities for manufacturing exports, potentially add thousands of well-paying jobs in the state, and secure this state's place in emerging markets in the world marketplace; and that with the potential for increasing exports, an investment in manufacturing today will mean significant long-term positive economic benefits to the state tomorrow.

Section 3. Paragraphs (b) and (d) of subsection (5) of section 212.08, Florida Statutes, are amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following

are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(b) Machinery and equipment used to increase productive output.--

1. Industrial machinery and equipment purchased for exclusive use by a new business in spaceport activities as defined by s. 212.02 or for use in new businesses which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations are exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used in a new business in this state. Such purchases must be made prior to the date the business first begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

2.~~a.~~ Industrial machinery and equipment purchased for exclusive use by an expanding facility which is engaged in spaceport activities as defined by s. 212.02 or for use in expanding manufacturing facilities or plant units which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state are exempt from any amount of tax imposed by this chapter ~~in excess of $50,000 per calendar year~~ upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the productive output of such expanded facility or business by not less than 10 percent.

~~b. Notwithstanding any other provision of this section, industrial machinery and equipment purchased for use in expanding printing manufacturing facilities or plant units that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state are exempt from any amount of tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the productive output of such an expanded business by not less than 10 percent.~~

3.a. To receive an exemption provided by subparagraph 1. or subparagraph 2., a qualifying business entity shall apply to the department for a temporary tax exemption permit. The application shall state that a new business exemption or expanded business exemption is being sought. Upon a tentative affirmative determination by the department pursuant to subparagraph 1. or subparagraph 2., the department shall issue such permit.

b. The applicant shall be required to maintain all necessary books and records to support the exemption. Upon completion of purchases of qualified machinery and equipment pursuant to subparagraph 1. or subparagraph 2., the temporary tax permit shall be delivered to the department or returned to the department by certified or registered mail.

c. If, in a subsequent audit conducted by the department, it is determined that the machinery and equipment purchased as exempt under subparagraph 1. or subparagraph 2. did not meet the criteria mandated by this paragraph or if commencement of production did not occur, the amount of taxes exempted at the

time of purchase shall immediately be due and payable to the department by the business entity, together with the appropriate interest and penalty, computed from the date of purchase, in the manner prescribed by this chapter.

d. In the event a qualifying business entity fails to apply for a temporary exemption permit or if the tentative determination by the department required to obtain a temporary exemption permit is negative, a qualifying business entity shall receive the exemption provided in subparagraph 1. or subparagraph 2. through a refund of previously paid taxes. No refund may be made for such taxes unless the criteria mandated by subparagraph 1. or subparagraph 2. have been met and commencement of production has occurred.

4. The department shall adopt rules governing applications for, issuance of, and the form of temporary tax exemption permits; provisions for recapture of taxes; and the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of increased productive output, commencement of production, and qualification for exemption.

5. The exemptions provided in subparagraphs 1. and 2. do not apply to machinery or equipment purchased or used by electric utility companies, communications companies, oil or gas exploration or production operations, publishing firms that do not export at least 50 percent of their finished product out of the state, any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, or any firm which does not manufacture,

process, compound, or produce for sale items of tangible personal property or which does not use such machinery and equipment in spaceport activities as required by this paragraph. The exemptions provided in subparagraphs 1. and 2. shall apply to machinery and equipment purchased for use in phosphate or other solid minerals severance, mining, or processing operations ~~only by way of a prospective credit against taxes due under chapter 211 for taxes paid under this chapter on such machinery and equipment~~.

6. For the purposes of the exemptions provided in subparagraphs 1. and 2., these terms have the following meanings:

a. "Industrial machinery and equipment" means tangible personal property or other property that has a depreciable life of 3 years or more and that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities. A building and its structural components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment are replaced. Heating and air-conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities. The term

includes parts and accessories only to the extent that the exemption thereof is consistent with the provisions of this paragraph.

b. "Productive output" means the number of units actually produced by a single plant or operation in a single continuous 12-month period, irrespective of sales. Increases in productive output shall be measured by the output for 12 continuous months immediately following the completion of installation of such machinery or equipment over the output for the 12 continuous months immediately preceding such installation. However, if a different 12-month continuous period of time would more accurately reflect the increase in productive output of machinery and equipment purchased to facilitate an expansion, the increase in productive output may be measured during that 12-month continuous period of time if such time period is mutually agreed upon by the Department of Revenue and the expanding business prior to the commencement of production; provided, however, in no case may such time period begin later than 2 years following the completion of installation of the new machinery and equipment. The units used to measure productive output shall be physically comparable between the two periods, irrespective of sales.

(d) Machinery and equipment used under federal procurement contract.--

1. Industrial machinery and equipment purchased by an expanding business which manufactures tangible personal property pursuant to federal procurement regulations at fixed locations in this state are ~~partially~~ exempt from the tax imposed in this

chapter ~~on that portion of the tax which is in excess of $100,000 per calendar year~~ upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the implicit productive output of the expanded business by not less than 10 percent. The percentage of increase is measured as deflated implicit productive output for the calendar year during which the installation of the machinery or equipment is completed or during which commencement of production utilizing such items is begun divided by the implicit productive output for the preceding calendar year. In no case may the commencement of production begin later than 2 years following completion of installation of the machinery or equipment.

2. The amount of the exemption allowed shall equal the taxes otherwise imposed by this chapter ~~in excess of $100,000 per calendar year~~ on qualifying industrial machinery or equipment reduced by the percentage of gross receipts from cost-reimbursement type contracts attributable to the plant or operation to total gross receipts so attributable, accrued for the year of completion or commencement.

3. The exemption provided by this paragraph shall inure to the taxpayer only through refund of previously paid taxes. Such refund shall be made within 30 days of formal approval by the department of the taxpayer's application, which application may be made on an annual basis following installation of the machinery or equipment.

4. For the purposes of this paragraph, the term:

a. "Cost-reimbursement type contracts" has the same meaning as in 32 C.F.R. s. 3-405.

b. "Deflated implicit productive output" means the product of implicit productive output times the quotient of the national defense implicit price deflator for the preceding calendar year divided by the deflator for the year of completion or commencement.

c. "Eligible costs" means the total direct and indirect costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding general and administrative costs, selling expenses, and profit, defined by the uniform cost-accounting standards adopted by the Cost-Accounting Standards Board created pursuant to 50 U.S.C. s. 2168.

d. "Implicit productive output" means the annual eligible costs attributable to all contracts or subcontracts subject to federal procurement regulations of the single plant or operation at which the machinery or equipment is used.

e. "Industrial machinery and equipment" means tangible personal property or other property that has a depreciable life of 3 years or more, that qualifies as an eligible cost under federal procurement regulations, and that is used as an integral part of the process of production of tangible personal property. A building and its structural components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment are replaced. Heating and air-

conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities. The term includes parts and accessories only to the extent that the exemption of such parts and accessories is consistent with the provisions of this paragraph.

f. "National defense implicit price deflator" means the national defense implicit price deflator for the gross national product as determined by the Bureau of Economic Analysis of the United States Department of Commerce.

5. The exclusions provided in subparagraph (b)5. apply to this exemption. This exemption applies only to machinery or equipment purchased pursuant to production contracts with the United States Department of Defense and Armed Forces, the National Aeronautics and Space Administration, and other federal agencies for which the contracts are classified for national security reasons. In no event shall the provisions of this paragraph apply to any expanding business the increase in productive output of which could be measured under the provisions of sub-subparagraph (b)6.b. as physically comparable between the two periods.

Section 4. Section 212.0805, Florida Statutes, is repealed.

Section 5. For the 2006-2007 fiscal year, the sum of $210,069 is appropriated from the General Revenue Fund and four positions are authorized to the Department of Revenue for the

purpose of implementing the provisions of this act. Of the funds provided, $191,825 are recurring and $18,244 are nonrecurring funds.

Section 6. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 237 CS Continued Employment Requirements/Law Enforcement Personnel
SPONSOR(S): Berfield and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	4 Y, 0 N, w/CS	Mitchell	Williamson
2) Insurance Committee	17 Y, 0 N	Callaway	Cooper
3) Fiscal Council		Dobbs	Kelly
4) State Administration Council			
5)			

SUMMARY ANALYSIS

HB 237 requires law enforcement officers, as well as correctional officers and correctional probation officers who are not currently subject to this requirement, to pass the physical examination that is required prior to employment or appointment in order to be eligible for the statutory presumption that total or partial disability or death, which is caused by tuberculosis, heart disease, or hypertension, is accidental and suffered in the line of duty.

HB 237 also provides specific authority for employing agencies to set tobacco-use standards for law enforcement officers, correctional officers, and correctional probation officers.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility – This bill changes the entitlement that law enforcement officers, correctional officers, and correctional probation officers have to the statutory presumption that total or partial disability or death, which is caused by tuberculosis, heart disease, or hypertension, is accidental and suffered in the line of duty.

B. EFFECT OF PROPOSED CHANGES:

Disability Presumptions

Section 112.18, Florida Statutes, provides that "any condition or impairment of health" caused by tuberculosis, heart disease, or hypertension that results in total or partial disability or death is presumed to be accidental and to have been suffered in the line of duty for firefighters,[1] law enforcement officers,[2] correctional officers,[3] or correctional probation officers.[4] This presumption may be rebutted by "competent evidence."[5]

Correctional officers and correctional probation officers are entitled to this presumption without a physical examination.[6] Firefighters and law enforcement officers, however, must successfully pass a physical examination "upon entering into such service" as a firefighter or law enforcement officer.[7]

The timing of the "upon entering into such service" examination requirement generally is interpreted in one of two ways: (1) the *first* point in time when a person first begins to work as a firefighter or law enforcement officer; or (2) the point in time when a person begins to work for a particular agency or employer as a firefighter or law enforcement officer.[8]

The potential conflict between the two interpretations becomes particularly evident in light of section 943.13(6), Florida Statutes, which requires officers to pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner. Although this section is silent as to the timing of the examination, the Criminal Justice Standards and Training Commission is authorized to establish the "specifications" for the examination, which it has done through rule 11B-27.002(1)(d), *Florida Administrative Code*, requiring the completion of a physician's assessment with each new employment or appointment of an officer. This rule also prohibits an employing agency from using a physician's assessment that was prepared for another employing agency.

HB 237 resolves the potential conflict in the timing of the examination for purposes of the presumption in section 112.18, Florida Statutes, by adding an eligibility requirement to the examination required by section 943.13(6), Florida Statutes. To be eligible for the presumption, the bill requires law

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[1] The firefighter must be a Florida state, municipal, county, port authority, special tax district, or fire control district firefighter.
[2] Fla. Stat. § 943.10(1) (2005).
[3] Fla. Stat. § 943.10(2) (2005).
[4] Fla. Stat. § 943.10(3) (2005).
[5] Fla. Stat. § 112.18(1) (2005).
[6] *State v. Reese*, 911 So.2d 1291 (1st DCA 2005) (holding that the plain language of the statutes does not require completion of a pre-employment physical as a condition precedent to the entitlement to the statutory presumption as is the case with firefighters and law enforcement officers).
[7] Fla. Stat. § 112.18(1) (2005).
[8] There appears to be only one case which has interpreted this examination requirement, *Cumbie v. City of Milton*, 496 So.2d 923 (1st DCA 1986). In *Cumbie*, a firefighter who did not undergo a physical examination "upon entering his employment" was not entitled to the statutory presumption in section 112.18, Florida Statutes. Yet, interpreting the phrase "upon entering into such service" as "upon entering his employment" does not resolve the two conflicting timing interpretations since both points of time were the same in *Cumbie*.

enforcement officers, correctional officers, and correctional probation officers[9] to successfully pass this required employment/appointment examination with no evidence of tuberculosis, heart disease, or hypertension upon entering into service with the employing agency[10]. This change is particularly significant for correctional officers and correctional probation officers, who are not currently required to have physical examinations in order to receive the presumption in section 112.18, Florida Statutes. The bill also prohibits the use of a physical examination from a former employing agency for purposes of claiming the presumption.

Application of the Revised Eligibility Requirements

Although the bill is silent as to whether the changes that effect the operation of section 112.18, Florida Statutes, apply retroactively or prospectively, these changes are classified as either "procedural" or "substantive." Procedural amendments apply retroactively since there is no vested right in any given procedure.[11] For example, adding officers to the list of employees entitled to the statutory presumption was a procedural enactment.[12] Thus, to the extent that this change can be characterized as a "burden of proof enactment," it is a procedural change and will apply retroactively unless otherwise limited. Yet, to the extent this change affects duties and rights or impacts benefits that may be received or the entitlement to services, it may be substantive and only apply prospectively.

Tobacco Use Standards

Section 943.137, Florida Statutes, allows employing agencies to establish qualifications and standards for employment, appointment, training, or promotion of officers that exceed certain minimum requirements. According to the Florida Department of Law Enforcement, employing agencies can establish tobacco-use policies under the authority of this section.[13] This bill, however, specifically provides the authority to set tobacco-use standards under this section.

C. SECTION DIRECTORY:

Section 1: Adds paragraph (b) to subsection (6) of section 943.13, Florida Statutes, to revise the operation of the presumption in section 112.18, Florida Statutes.

Section 2: Amends subsection (1) of section 943.137, Florida Statutes, authorizing the establishment of tobacco use standards.

Section 3: Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[9] Fla. Stat. § 943.10(1), (2), & (3) (2005).
[10] Fla. Stat. § 943.10(4) (2005).
[11] *Litvin v. St. Lucie County Sheriff's Dep't*, 599 So.2d 1353 (Fla. 1st DCA), rev. denied, 613 So.2d 6 (Fla.1992), cert. denied, 508 U.S. 913, 113 S.Ct. 2350, 124 L.Ed.2d 258 (1993).
[12] *State v. Reese*, 911 So.2d 1291 (1st DCA 2005)
[13] Fla. Dep't of Law Enforcement., HB 237 (2006) Staff Analysis (Oct. 27, 2005) (on file with dep't).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Changing Section 112.18, Florida Statutes, Instead

The effect of the change to section 943.13(6)(b) is to change the operation of the presumption provided in section 112.18, Florida Statutes. As such, the sponsor may wish to consider making these changes directly in section 112.18, Florida Statutes.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 8, 2006, the Governmental Operations committee adopted a strike-everything amendment which revises and places the two provisions of the bill in separate sections:

- The amendment provides that the physical examination required for employment or appointment as a law enforcement officer, correctional officer, or correctional probation officer must be successfully passed in order to be eligible for the statutory presumption that total or partial disability or death, which is caused by tuberculosis, heart disease, or hypertension, is accidental and suffered in the line of duty.

- The amendment also provides specific authority for employing agencies to set tobacco-use standards.

The bill was reported favorably with committee substitute.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to employment requirements for law enforcement personnel; amending s. 943.13, F.S.; revising the presumption of disability for certain law enforcement, correctional, and correctional probation officers; amending s. 943.137, F.S.; authorizing establishment of tobacco-use standards; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 943.13, Florida Statutes, is amended to read:

943.13 Officers' minimum qualifications for employment or appointment.--On or after October 1, 1984, any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer or correctional officer; on or after October 1, 1986, any person employed as a full-time, part-time, or auxiliary correctional probation officer; and on or after October 1, 1986, any person employed as a full-time, part-time,

or auxiliary correctional officer by a private entity under contract to the Department of Corrections, to a county commission, or to the Department of Management Services shall:

(6)(a) Have passed a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the commission.

(b) In order to be eligible for the presumption set forth in s. 112.18 while employed as a law enforcement officer, correctional officer, or correctional probation officer with an employing agency, have successfully passed the physical examination required by paragraph (a) upon entering into service as a law enforcement officer, correctional officer, or correctional probation officer with the employing agency, which examination must have failed to reveal any evidence of tuberculosis, heart disease, or hypertension. In no event may a law enforcement officer, correctional officer, or correctional probation officer use a physical examination from a former employing agency for purposes of claiming the presumption set forth in s. 112.18 against the current employing agency.

Section 2. Subsection (1) of section 943.137, Florida Statutes, is amended to read:

943.137 Establishment of qualifications and standards above the minimum.--

(1) Nothing herein may be construed to preclude an employing agency from establishing qualifications and standards for employment, appointment, training, or promotion of officers

that exceed the minimum requirements set by ss. 943.13 and 943.17, including establishing tobacco-use standards.

Section 3. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 241 CS Florida KidCare Program
SPONSOR(S): Vana and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care General Committee	8 Y, 0 N, w/CS	Brown-Barrios	Brown-Barrios
2) Health Care Appropriations Committee	15 Y, 0 N	Speir	Massengale
3) Fiscal Council		Speir	Kelly
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The Florida KidCare Program was created in 1998 to provide health benefits to uninsured children through the State Children's Health Insurance Program (SCHIP) or Medicaid. KidCare has four program components: Medicaid, Medikids, Florida Healthy Kids, and the Children's Medical Services (CMS) Network. Participation by children in these components is contingent on age, family income, and special health care needs.

House Bill 241 CS amends section 409.814, Florida Statutes, to allow a child ineligible to participate in the Medikids or Florida Healthy Kids components to participate if the family pays the full premium without any premium assistance. These children are known as "full-pays."

The bill requires the Agency for Health Care Administration to begin enrollment of full-pays by July 1, 2006.

The bill has no fiscal impact on state or local government.

If enacted, the bill takes effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families—The bill creates an opportunity for certain families to secure health insurance coverage for their children.

B. EFFECT OF PROPOSED CHANGES:

The Florida KidCare Program was created in 1998 to provide health benefits to uninsured children through the State Children's Health Insurance Program or Medicaid. KidCare has four program components: Medicaid, Medikids, Florida Healthy Kids, and the Children's Medical Services (CMS) Network. Participation by children in these components is contingent on age, family income, and special health care needs.

In order to be eligible for the subsidized portion of KidCare, a child must be a United States citizen or a qualified alien, under age 19, and have a family income that is equal to or less than 200% of the federal poverty level. Further the child cannot be:

1. Eligible for coverage under a state health benefit plan on the basis of a family member's employment with a public agency in the state.

2. Eligible for a family member's group health benefit plan or under other employer health insurance coverage, provided that the cost of the child's participation is not greater than 5 percent of the family's income.

3. An inmate of a public institution or a patient in an institution for mental diseases, or

4. A child who has had his or her coverage in an employer-sponsored health benefit plan voluntarily canceled in the last 6 months.

Section 409.814 (5), F.S., allows children that are not eligible to participate in KidCare to participate in a component, except Medicaid, if their family pays the full cost of the premium, including administrative costs. These children are known as "full-pays" and the statute limits them to no more than 10 percent of the total enrollment in each component.

This bill amends s. 409.814 (5) to state that full pays may participate in Medikids or the Florida Healthy Kids program. This eliminates the possibility for children to participate in the CMS network as a full-pay, although there has never been a full-pay in the CMS network because of the enormous premium that a family would have to pay.

The Florida Healthy Kids program, which serves children ages 5 -18, is the only component that has enrolled full-pays. The Agency for Health Care Administration administers the Medikids component that serves children ages 1 – 4, and they have chosen not to enroll any children as full-pays.

This has led to a situation where children from the same family are treated differently. The family can purchase health insurance for their child who is old enough for the Florida Healthy Kids program but not for their child that is in the Medikids age group. This bill requires AHCA to begin enrolling full-pays by July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends subsection (5) of section 409.814, F.S.

Section 2. Requires the Agency for Health Care Administration to begin enrolling full-pays by July 1, 2006.

Section 3. Establishes an effective date for the act of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care providers, including health maintenance organizations, which arrange most of the health services for children enrolled in Medikids, should realize an increase in revenue as a result of increased enrollment by families that are willing to pay the full premium.

Children with families above 200 percent of the FPL or who are not otherwise eligible for premium assistance must pay the full premium, including administrative costs, without any premium assistance to participate in Medikids or Healthy Kids.

D. FISCAL COMMENTS:

AHCA would need to obtain actuarial services to calculate an appropriate Medikids premium for the full-pay option that would support the cost of services, reinsurance, and other administrative costs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Sufficient rulemaking authority exists to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is an apparent conflict between the requirement to enroll children in the full-pay option by July 1, 2006, and the effective date of the bill, which also is July 1, 2006.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Health Care General Committee adopted one amendment to the bill. The amendment:

- Amends s. 409.814, F.S., to allow a family with a child who is not eligible for the Medikids or Healthy Kids program because the family income is above 200 percent of the Federal Poverty Level (FPL) or because the child is not eligible for other reasons delineated in statute to participate in these programs, if the family pays the full premium without any premium assistance.
- Requires AHCA to begin enrollment of children from families with income above 200 percent of the FPL or children not eligible for premium assistance in Medikids by July 1, 2006.

As amended, the bill was reported favorably as a committee substitute.

This analysis reflects the bill as amended.

CHAMBER ACTION

The Health Care General Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida KidCare program; amending s. 409.814, F.S.; providing for certain children who are ineligible to participate in the Florida KidCare program to be eligible for the Medikids program or the Florida Healthy Kids program; requiring that the Agency for Health Care Administration begin enrollment under the revised program criteria by a specified date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) of section 409.814, Florida Statutes, is amended to read:

409.814 Eligibility.--A child who has not reached 19 years of age whose family income is equal to or below 200 percent of the federal poverty level is eligible for the Florida KidCare program as provided in this section. For enrollment in the Children's Medical Services Network, a complete application

includes the medical or behavioral health screening. If, subsequently, an individual is determined to be ineligible for coverage, he or she must immediately be disenrolled from the respective Florida KidCare program component.

(5) A child whose family income is above 200 percent of the federal poverty level or a child who is excluded under the provisions of subsection (4) may participate in the Medikids program as provided in s. 409.8132 or, if the child is ineligible for Medikids by reason of age, in the Florida Healthy Kids program ~~Florida KidCare program~~, ~~excluding the Medicaid program, but is~~ subject to the following provisions:

(a) The family is not eligible for premium assistance payments and must pay the full cost of the premium, including any administrative costs.

(b) The agency is authorized to place limits on enrollment in Medikids by these children in order to avoid adverse selection. The number of children participating in Medikids whose family income exceeds 200 percent of the federal poverty level must not exceed 10 percent of total enrollees in the Medikids program.

(c) The board of directors of the Florida Healthy Kids Corporation is authorized to place limits on enrollment of these children in order to avoid adverse selection. In addition, the board is authorized to offer a reduced benefit package to these children in order to limit program costs for such families. The number of children participating in the Florida Healthy Kids program whose family income exceeds 200 percent of the federal

poverty level must not exceed 10 percent of total enrollees in the Florida Healthy Kids program.

(d) Children described in this subsection are not counted in the annual enrollment ceiling for the Florida KidCare program.

Section 2. The Agency for Health Care Administration shall begin enrollment under s. 409.814(5), Florida Statutes, as amended by this act, by July 1, 2006.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 381 Firefighter Pensions
SPONSOR(S): Gibson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1380

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	5 Y, 0 N	Mitchell	Williamson
2) Local Government Council	7 Y, 0 N	Nelson	Hamby
3) Fiscal Council		Dobbs DD	Kelly CK
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill expands the statutory definition of "special fire control district" to include community development districts that perform fire suppression and related services so that these entities may establish Chapter 175 pension plans for their firefighters and become eligible for state premium tax revenues to assist in the funding of such plans.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families

This bill may facilitate the creation of a pension plan for firefighters employed by a community development district providing fire suppression services.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Community Development Districts

Chapter 190, F.S., the "Uniform Community Development District Act of 1980," sets forth the uniform procedure for the establishment and operation of a particular type of independent special district, the community development district (CDD), which serves as an alternative method to manage and finance basic services for community development.[1] There currently are 381 active CDDs in Florida.[2]

Among the general powers granted to a CDD include the authority to: sue and be sued, participate in the state retirement system, contract for services, borrow money, accept gifts, adopt rules and orders, maintain an office, lease, issue bonds, raise money by user charges or fees, assess and impose ad valorem taxes upon lands in the CDD, and levy and enforce special assessments.[3]

CDDs also have special powers related to the following systems, facilities and basic infrastructures: water management, water supply, sewer, wastewater management, roads, bridges, culverts, street lights, buses, trolleys, transit shelters, ridesharing facilities and services, parking improvements, signage, environmental contamination, conservation areas, mitigation areas and wildlife habitat.[4]

Additionally, CDDs can be authorized by local governments to address: parks and facilities for indoor and outdoor recreational, cultural and educational uses; fire prevention and control, including fire stations, water mains and plugs, fire trucks, and other vehicles and equipment; school buildings and related structures; security; control and elimination of mosquitoes and other arthropods of public health importance; and waste collection and disposal.[5]

The number of community development districts providing fire prevention and control ("Fire CDDs") in existence is not available from the Department of Management Services, the Special District Information Program of the Department of Community Affairs, or the State Fire Marshal and, thus, unknown. However, it is estimated that only a small number of these entities exist.[6] The pay and benefits of any firefighter working for a Fire CDD are determined by the Fire CDD.

Municipal and Special District Firefighter Pensions

Chapter 175, F.S., sets forth the minimum benefits and standards for municipal and special district firefighter pension plans. This chapter creates a purely voluntary program whereby these local

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[1] Section 190.002, F.S.
[2] Fla. Dep't of Comm'y Aff., Div. of Hous. and Comm'y Dev., Special Dist. Info. Program, *Create Your Own List of Special Districts* (search "community development" under "Functions to Include")(visited Mar. 14, 2005) <http://www.floridaspecialdistricts.org/ OfficialList/criteria.asp>.
[3] Section 190.011, F.S.
[4] Section 190.012(1), F.S.
[5] Section 190.012(2), F.S.
[6] Conversations and e-mails with attorneys representing CDDs (Jan. and Feb. 2005).

governments may receive state-collected taxes, imposed on property insurance premiums, with which to fund retirement programs for local firefighters.[7] There currently are 20 special fire control districts and 159 municipalities that have established Chapter 175 plans.[8] These plans had revenues of approximately $66,319,992 in 2004; $5,096,380 of those revenues were generated by special fire control districts.[9]

Section 175.032 (16), F.S., defines "special fire control district" to mean "a special district, as defined in s. 189.403(1), F.S., established for the purposes of extinguishing fires, protecting life, and protecting property within the incorporated or unincorporated portions of any county or combination of counties, or within any combination of incorporated and unincorporated portions of any county or combination of counties. The term does not include any dependent or independent special district, as defined in s. 189.403(2) and (3), respectively, the employees of which are members of the Florida Retirement System pursuant to s. 121.051(1) or (2)."

The following sources provide funding for the firefighters' pension trust fund:

- payment from the "premium tax"—the net proceeds of the 1.85-percent excise upon fire insurance companies, fire insurance associations, or other property insurers on their gross receipts on premiums from holders of policies covering real or personal property within the legal boundaries of the municipality/special fire control district;
- payment of a designated percentage deducted from the salary of each uniformed firefighter;
- payment of all fines and forfeitures imposed and collected from the violation of any rule and regulation promulgated by the board of trustees;
- mandatory payment from the municipality/special fire control district of the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of ch. 112, F.S.;
- all gifts, bequests and devises when donated;
- all increases in the fund by way of interest or dividends on bank deposits; and
- other sources or income authorized by law for the augmentation of such firefighters' pension trust fund.[10]

Chapter 175, F.S., provides requirements for the retirement,[11] disability,[12] death[13] and presumed injuries[14] of municipality/fire control special district firefighters under the plan.

The Division of Retirement is responsible for the daily oversight and monitoring of any firefighter pension plan of a municipality/special fire control district.[15] Actuarial deficits are not, however, obligations of the State of Florida.[16]

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[7] See, The City of Orlando v. State of Florida Department of Insurance, 528 So. 2d 468 (Fla. 1st DCA 1988).
[8] Dep't of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep't).
[9] *Id.*
[10] Section 175.091, F.S.
[11] Section 175.162, F.S.
[12] Section 175.191, F.S.
[13] Section 175.201, F.S.
[14] Section 175.231, F.S. (Conditions or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty after passing a physical examination and subject to rebuttal).
[15] Section 175.341, F.S.
[16] Section 175.051, F.S..

Effect of Proposed Changes

This bill expands the Chapter 175 definition of "special fire control district" to include community development districts that perform fire suppression and related services. As a result, these entities may establish Chapter 175 pension plans for their firefighters and become eligible for state premium tax revenues to assist in the funding of such plans. Only those CDDs that have their own fire departments and equipment, as provided in s. 175.041, F.S., and actually employ their own firefighters will qualify.

CDDs may not exercise the special powers of "fire prevention and control" without the consent of the appropriate local government.[17] Therefore, it is assumed that there will not be a conflict between these entities and municipal or special fire control districts over premium tax revenues.[18]

C. SECTION DIRECTORY:

Section 1: Amends subsection (16) of s. 175.032, F.S., to amend the definition of "special fire control district."

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurance companies are obligated to report and remit the excise tax on property insurance premiums pursuant to s. 175.101, F.S. These companies may be impacted by the addition of a new entity authorized to receive these taxes.

D. FISCAL COMMENTS:

None.

[17] Section 190.012(2)(b), F.S.

[18] Department of Management Services, Substantive Bill Analysis for HB 381, dated November 25, 2005, on file with the Local Government Council.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Authority to Collect the Tax on Property Insurance Premiums

The Department of Management Services has suggested that ch. 190, F.S., which governs CDDs, may need to be amended to give CDDs the authority to levy the premium tax.[19] Although s. 175.101(1), F.S., provides that each special fire control district "may assess and impose" the premium tax, the sponsor may wish to consider the following amendment to s. 190.011, F.S.:

(17) To assess and impose the state excise tax authorized under s. 175.101, if exercising the powers permitted under s. 190.012(2)(b).

Different Types of Districts

CDDs and special fire control districts are different types of independent special districts which are governed by two different chapters of the Florida Statutes: chs.190 and 191, respectively. This bill, however, includes certain CDDs in the definition of special fire control district for purposes of ch. 175, F.S. Given the different legal and statutory status of these two types of districts, it would be better to define and provide for CDDs throughout the chapter. Yet, given the unknown and anticipated low number of Fire CDDs, such a substantial amendment to ch.175, F.S., may not be warranted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

[19] Ibid.

A bill to be entitled

An act relating to firefighter pensions; amending s. 175.032, F.S.; revising the definition of the term "special fire control district" to include certain community development districts performing fire suppression and related services; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (16) of section 175.032, Florida Statutes, is amended to read:

175.032 Definitions.--For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the following words and phrases have the following meanings:

(16) "Special fire control district" means a special district, as defined in s. 189.403(1), established for the purposes of extinguishing fires, protecting life, and protecting property within the incorporated or unincorporated portions of any county or combination of counties, or within any combination of incorporated and unincorporated portions of any county or combination of counties. The term includes community development districts providing fire suppression and related services pursuant to s. 190.012(2)(b). The term does not include any dependent or independent special district, as defined in s. 189.403(2) and (3), respectively, the employees of which are

members of the Florida Retirement System pursuant to s. 121.051(1) or (2).

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 421 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Reagan
TIED BILLS: **IDEN./SIM. BILLS:** SB 952

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	5 Y, 0 N	Noriega	Diez-Arguelles
2) Economic Development, Trade & Banking Committee			
3) Fiscal Council		Noriega	Kelly
4)			
5)			

SUMMARY ANALYSIS

This bill extends the repeal date for some, and removes the repeal date for other, provisions of law relating to tax exemptions for convention halls, exhibition halls, auditoriums, stadiums, theatres, arenas, civic centers, performing arts centers, and publicly owned recreational facilities.

The Revenue Estimating Conference has estimated that in both FY 2006-07 and FY 2007-08, this bill will have a negative fiscal impact of $3.8 million to state government and a negative fiscal impact of $0.9 million to local governments.

The bill provides an effective date of July 1, 2006.

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes: This bill retains certain tax exemptions for certain facilities which are set to expire on July 1, 2006.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Sections 212.031 and 212.04, F.S., contain several sales tax exemptions for certain leases, services, admissions, and fees associated with events at certain facilities. The following sales tax exemptions are scheduled to be repealed on July 1, 2006, pursuant to chapter 2002-218, L.O.F.:

- Section 212.031(1)(a)12., F.S., which provides an exemption from any tax to be paid to a convention hall, exhibition hall, auditorium, stadium, theatre, arena, civic center, performing arts center, or publicly owned recreational facility that is renting, leasing, subleasing, or licensing use of the facility to a concessionaire for the sale of souvenirs, novelties, or other event-related products. The exemption applies only to that portion of the tax based on a percentage of sales and not based on a fixed price;

- Section 212.031(3), F.S., which requires that the tax due on the rental, lease, or license for the use of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility for an event not lasting longer than 7 days be collected at the time of the payment for the rental, lease or license. However, the tax is not due to the Department of Revenue until the first day of the month following the last day of the event for which the payment is held. The payment is considered delinquent on the 21st day of that month;

- Section 212.031(10), F.S., which provides a tax exemption for rental or license fees on separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required in connection with a lease or license to use real property. This exemption includes charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing;

- Section 212.04(1)(b), F.S., which provides that for purposes of calculating the admissions tax, the sale price for admission is the price remaining after deduction of federal taxes and state or locally imposed or authorized seat surcharges, taxes, or fees, if any, imposed upon the admissions, and that the actual sale price does not include separately stated ticket service charges that are imposed and added to a separately stated, established ticket price;

- Section 212.04(2)(a)2.b., F.S., which grants an exemption for admission charges to an event that is sponsored 100 percent by a governmental entity, sports authority, or sports commission when held in a convention hall, exhibition hall, auditorium, stadium, theatre, arena, civic center, performing arts center, or publicly owned recreational facility. In order to be eligible, the governmental entity, sports authority, or sports commission must be responsible for: 100 percent of the risk of success or failure of the event, 100 percent of the funds at risk for the event, and must not exclusively use student or faculty talent. The terms "sports authority" and "sports commission" mean a nonprofit organization that is exempt from federal income tax

under s. 501(c) (3) of the Internal Revenue Code and that contracts with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts; and

- Section 212.04(3), F.S., which provides that the tax on the admission to an event scheduled at a convention hall, exhibition hall, auditorium, stadium, theatre, arena, civic center, performing arts center, or publicly owned recreational facility shall be collected at the time of payment for admission. However, the tax is not due to the Department of Revenue until the first day of the month following the actual date of the event, and that the payment will be considered delinquent on the 21st day of that month.

Proposed Changes

The bill extends the repeal date of the following exemptions until July 1, 2009:

- Section 212.031(1)(a)12., F.S., which provides an exemption for souvenir concessionaires on the portion of the rental, lease, or license payment which is based on a percentage of sales and not based on a fixed price;

- Section 212.031(10), F.S., which provides a tax exemption for rental or license fees on separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required in connection with a lease or license to use real property; and

- Section 212.04(2)(a)2.b., F.S., which grants an exemption from admissions to events solely dependent on the government entity, sports authority, or sports commission sponsoring the event.

The bill deletes the repeal date permanently for the following exemptions:

- Section 212.031(3), F.S., which requires that the tax due on the rental, lease, or license for the use of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility for an event not lasting longer than 7 days be collected at the time of the payment for the rental, lease or license. However, the tax is not due to the Department of Revenue until the first day of the month following the last day of the event for which the payment is held. The payment is considered delinquent on the 21st day of that month;

- Section 212.04(1)(b), F.S., which provides an exemption from state or locally imposed or authorized seat surcharges, taxes, or fees from the admissions tax; and

- Section 212.04(3), F.S., which provides that the tax on the admission to an event scheduled at a convention hall, exhibition hall, auditorium, stadium, theatre, arena, civic center, performing arts center, or publicly owned recreational facility shall be collected at the time of payment for admission. However, the tax is not due to the Department of Revenue until the first day of the month following the actual date of the event, and that the payment will be considered delinquent on the 21st day of that month.

C. SECTION DIRECTORY:

Section 1. Amends s. 212.031(1)(a)12., F.S., extending the repeal of certain tax exemptions from any tax to be paid by certain facilities renting, leasing, subleasing, or licensing to a concessionaire using the facility to sell souvenirs, novelties, or other event-related

products; saving s. 212.031(3), F.S., which addresses when the taxes are due, from repeal.

Section 2. Provides an extension for the repeal of s. 212.031(10), F.S., which addresses an exemption from tax on separately stated charges.

Section 3. Amends s. 212.04(1)(b), F.S., saving from repeal an exemption from admissions; amends s. 212.04(2)(a)2.b., F.S., extending the repeal of an exemption from admissions; saving s. 212.04(3), F.S., which addresses when the taxes are due, from repeal.

Section 4. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on state government:

	2006-07	2007-08
General Revenue	($3.8m)	($3.8m)
State Trust	(Indeterminate)	(Indeterminate)
Total	($3.8m)	($3.8m)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have the following negative fiscal impact on local governments:

	2006-07	2007-08
Revenue Sharing	($0.1m)	($0.1m)
Local Gov't. Half Cent	($0.4m)	($0.4m)
Local Option	($0.4m)	($0.4m)
Total Local Impact	($0.9m)	($0.9m)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The facilities that are eligible for the sales tax exemptions addressed by this bill will continue to benefit because they do not have to pay a sales tax on certain items.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision appears to apply because the bill reduces the authority that counties have to raise revenues through local option sales taxes; however, the amount of the reduction is insignificant, and therefore an exemption applies. Accordingly, the bill does not require a two-thirds vote of the membership of each house.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; amending s. 212.031, F.S.; continuing an exemption from the tax on rental or license fees which is provided for certain property rented, leased, or licensed by a convention or exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility for a specified period; providing for future repeal; postponing the repeal of and reviving and readopting s. 212.031(10), F.S., relating to an exemption provided for certain charges imposed by a convention or exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee; providing for future repeal; amending s. 212.04, F.S., relating to the tax on admissions; continuing in effect a provision that excludes certain service charges from the sale price or actual value of an admission; continuing an exemption from the tax which is provided for admission charges to an event sponsored by a governmental entity, sports authority, or sports commission; providing for future repeal; continuing in effect provisions governing the remitting of certain admission taxes to the Department of Revenue; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 212.031, Florida Statutes, as amended by section 3 of chapter 2000-345, as amended by section 55 of chapter 2002-218, and as amended by section 2 of chapter 2000-182, section 1 of chapter 2000-183, section 53 of chapter 2000-260, and section 27 of chapter 2001-140, Laws of Florida, and subsection (3) of said section, as amended by section 3 of chapter 2000-345, as amended by section 55 of chapter 2002-218, Laws of Florida, are amended to read:

212.031 Tax on rental or license fee for use of real property.--

(1)(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property unless such property is:

1. Assessed as agricultural property under s. 193.461.

2. Used exclusively as dwelling units.

3. Property subject to tax on parking, docking, or storage spaces under s. 212.03(6).

4. Recreational property or the common elements of a condominium when subject to a lease between the developer or owner thereof and the condominium association in its own right or as agent for the owners of individual condominium units or the owners of individual condominium units. However, only the lease payments on such property shall be exempt from the tax imposed by this chapter, and any other use made by the owner or the condominium association shall be fully taxable under this chapter.

5. A public or private street or right-of-way and poles, conduits, fixtures, and similar improvements located on such streets or rights-of-way, occupied or used by a utility or provider of communications services, as defined by s. 202.11, for utility or communications or television purposes. For purposes of this subparagraph, the term "utility" means any person providing utility services as defined in s. 203.012. This exception also applies to property, wherever located, on which the following are placed: towers, antennas, cables, accessory structures, or equipment, not including switching equipment, used in the provision of mobile communications services as defined in s. 202.11. For purposes of this chapter, towers used in the provision of mobile communications services, as defined in s. 202.11, are considered to be fixtures.

6. A public street or road which is used for transportation purposes.

7. Property used at an airport exclusively for the purpose of aircraft landing or aircraft taxiing or property used by an airline for the purpose of loading or unloading passengers or property onto or from aircraft or for fueling aircraft.

8.a. Property used at a port authority, as defined in s. 315.02(2), exclusively for the purpose of oceangoing vessels or tugs docking, or such vessels mooring on property used by a port authority for the purpose of loading or unloading passengers or cargo onto or from such a vessel, or property used at a port authority for fueling such vessels, or to the extent that the amount paid for the use of any property at the port is based on the charge for the amount of tonnage actually imported or

exported through the port by a tenant.

b. The amount charged for the use of any property at the port in excess of the amount charged for tonnage actually imported or exported shall remain subject to tax except as provided in sub-subparagraph a.

9. Property used as an integral part of the performance of qualified production services. As used in this subparagraph, the term "qualified production services" means any activity or service performed directly in connection with the production of a qualified motion picture, as defined in s. 212.06(1)(b), and includes:

a. Photography, sound and recording, casting, location managing and scouting, shooting, creation of special and optical effects, animation, adaptation (language, media, electronic, or otherwise), technological modifications, computer graphics, set and stage support (such as electricians, lighting designers and operators, greensmen, prop managers and assistants, and grips), wardrobe (design, preparation, and management), hair and makeup (design, production, and application), performing (such as acting, dancing, and playing), designing and executing stunts, coaching, consulting, writing, scoring, composing, choreographing, script supervising, directing, producing, transmitting dailies, dubbing, mixing, editing, cutting, looping, printing, processing, duplicating, storing, and distributing;

b. The design, planning, engineering, construction, alteration, repair, and maintenance of real or personal property including stages, sets, props, models, paintings, and facilities

principally required for the performance of those services listed in sub-subparagraph a.; and

c. Property management services directly related to property used in connection with the services described in sub-subparagraphs a. and b.

This exemption will inure to the taxpayer upon presentation of the certificate of exemption issued to the taxpayer under the provisions of s. 288.1258.

10. Leased, subleased, licensed, or rented to a person providing food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, publicly owned recreational facility, or any business operated under a permit issued pursuant to chapter 550. A person providing retail concessionaire services involving the sale of food and drink or other tangible personal property within the premises of an airport shall be subject to tax on the rental of real property used for that purpose, but shall not be subject to the tax on any license to use the property. For purposes of this subparagraph, the term "sale" shall not include the leasing of tangible personal property.

11. Property occupied pursuant to an instrument calling for payments which the department has declared, in a Technical Assistance Advisement issued on or before March 15, 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c), Florida Administrative Code; provided that this subparagraph shall only apply to property occupied by the same person before and after

the execution of the subject instrument and only to those payments made pursuant to such instrument, exclusive of renewals and extensions thereof occurring after March 15, 1993.

12. Rented, leased, subleased, or licensed to a concessionaire by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility, during an event at the facility, to be used by the concessionaire to sell souvenirs, novelties, or other event-related products. This subparagraph applies only to that portion of the rental, lease, or license payment which is based on a percentage of sales and not based on a fixed price. This subparagraph is repealed July 1, 2009.

13.~~12.~~ Property used or occupied predominantly for space flight business purposes. As used in this subparagraph, "space flight business" means the manufacturing, processing, or assembly of a space facility, space propulsion system, space vehicle, satellite, or station of any kind possessing the capacity for space flight, as defined by s. 212.02(23), or components thereof, and also means the following activities supporting space flight: vehicle launch activities, flight operations, ground control or ground support, and all administrative activities directly related thereto. Property shall be deemed to be used or occupied predominantly for space flight business purposes if more than 50 percent of the property, or improvements thereon, is used for one or more space flight business purposes. Possession by a landlord, lessor, or licensor of a signed written statement from the tenant, lessee,

or licensee claiming the exemption shall relieve the landlord, lessor, or licensor from the responsibility of collecting the tax, and the department shall look solely to the tenant, lessee, or licensee for recovery of such tax if it determines that the exemption was not applicable.

(3) The tax imposed by this section shall be in addition to the total amount of the rental or license fee, shall be charged by the lessor or person receiving the rent or payment in and by a rental or license fee arrangement with the lessee or person paying the rental or license fee, and shall be due and payable at the time of the receipt of such rental or license fee payment by the lessor or other person who receives the rental or payment. Notwithstanding any other provision of this chapter, the tax imposed by this section on the rental, lease, or license for the use of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility to hold an event of not more than 7 consecutive days' duration shall be collected at the time of the payment for that rental, lease, or license but is not due and payable to the department until the first day of the month following the last day that the event for which the payment is made is actually held, and becomes delinquent on the 21st day of that month. The owner, lessor, or person receiving the rent or license fee shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns;

the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage any leases or operate real property, hotels, apartment houses, roominghouses, or tourist and trailer camps and all persons who collect or receive rents or license fees taxable under this chapter on behalf of owners or lessors.

Section 2. Notwithstanding the provisions of section 3 of chapter 2000-345, Laws of Florida, as amended by section 55 of chapter 2002-218, Laws of Florida, subsection (10) of s. 212.031, Florida Statutes, shall not stand repealed on July 1, 2006, as scheduled by such laws, but that subsection is revived and readopted. Subsection (10) of s. 212.031, Florida Statutes, is repealed July 1, 2009.

Section 3. Paragraph (b) of subsection (1) and subsection (3) of section 212.04, Florida Statutes, as amended by section 4 of chapter 2000-345, as amended by section 55 of chapter 2002-218, Laws of Florida, and paragraph (a) of subsection (2) of said section, as amended by section 4 of chapter 2000-345, as amended by section 55 of chapter 2002-218, as amended by section 916 of chapter 2002-387, and as amended by section 24 of chapter 2000-158, and section 11 of chapter 2000-210, Laws of Florida, are amended to read:

212.04 Admissions tax; rate, procedure, enforcement.--

(1)

(b) For the exercise of such privilege, a tax is levied at the rate of 6 percent of sales price, or the actual value received from such admissions, which 6 percent shall be added to

and collected with all such admissions from the purchaser thereof, and such tax shall be paid for the exercise of the privilege as defined in the preceding paragraph. Each ticket must show on its face the actual sales price of the admission, or each dealer selling the admission must prominently display at the box office or other place where the admission charge is made a notice disclosing the price of the admission, and the tax shall be computed and collected on the basis of the actual price of the admission charged by the dealer. The sale price or actual value of admission shall, for the purpose of this chapter, be that price remaining after deduction of federal taxes and state or locally imposed or authorized seat surcharges, taxes, or fees, if any, imposed upon such admission. The sale price or actual value does not include separately stated ticket service charges that are imposed by a facility ticket office or a ticketing service and added to a separately stated, established ticket price., ~~and~~ The rate of tax on each admission shall be according to the brackets established by s. 212.12(9).

(2)(a)1. No tax shall be levied on admissions to athletic or other events sponsored by elementary schools, junior high schools, middle schools, high schools, community colleges, public or private colleges and universities, deaf and blind schools, facilities of the youth services programs of the Department of Children and Family Services, and state correctional institutions when only student, faculty, or inmate talent is used. However, this exemption shall not apply to admission to athletic events sponsored by a state university, and the proceeds of the tax collected on such admissions shall

be retained and used by each institution to support women's athletics as provided in s. 1006.71(2)(c).

2.a. No tax shall be levied on dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations. To receive this exemption, the sponsoring organization must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1954, as amended.

b. No tax shall be levied on admission charges to an event sponsored by a governmental entity, sports authority, or sports commission when held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility and when 100 percent of the risk of success or failure lies with the sponsor of the event and 100 percent of the funds at risk for the event belong to the sponsor, and student or faculty talent is not exclusively used. As used in this sub-subparagraph, the terms "sports authority" and "sports commission" mean a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that contracts with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts. This sub-subparagraph is repealed July 1, 2009.

3. No tax shall be levied on an admission paid by a student, or on the student's behalf, to any required place of sport or recreation if the student's participation in the sport or recreational activity is required as a part of a program or

activity sponsored by, and under the jurisdiction of, the student's educational institution, provided his or her attendance is as a participant and not as a spectator.

4. No tax shall be levied on admissions to the National Football League championship game, on admissions to any semifinal game or championship game of a national collegiate tournament, or on admissions to a Major League Baseball all-star game.

5. A participation fee or sponsorship fee imposed by a governmental entity as described in s. 212.08(6) for an athletic or recreational program is exempt when the governmental entity by itself, or in conjunction with an organization exempt under s. 501(c)(3) of the Internal Revenue Code of 1954, as amended, sponsors, administers, plans, supervises, directs, and controls the athletic or recreational program.

6. Also exempt from the tax imposed by this section to the extent provided in this subparagraph are admissions to live theater, live opera, or live ballet productions in this state which are sponsored by an organization that has received a determination from the Internal Revenue Service that the organization is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code of 1954, as amended, if the organization actively participates in planning and conducting the event, is responsible for the safety and success of the event, is organized for the purpose of sponsoring live theater, live opera, or live ballet productions in this state, has more than 10,000 subscribing members and has among the stated purposes in its charter the promotion of arts education

in the communities which it serves, and will receive at least 20 percent of the net profits, if any, of the events which the organization sponsors and will bear the risk of at least 20 percent of the losses, if any, from the events which it sponsors if the organization employs other persons as agents to provide services in connection with a sponsored event. Prior to March 1 of each year, such organization may apply to the department for a certificate of exemption for admissions to such events sponsored in this state by the organization during the immediately following state fiscal year. The application shall state the total dollar amount of admissions receipts collected by the organization or its agents from such events in this state sponsored by the organization or its agents in the year immediately preceding the year in which the organization applies for the exemption. Such organization shall receive the exemption only to the extent of $1.5 million multiplied by the ratio that such receipts bear to the total of such receipts of all organizations applying for the exemption in such year; however, in no event shall such exemption granted to any organization exceed 6 percent of such admissions receipts collected by the organization or its agents in the year immediately preceding the year in which the organization applies for the exemption. Each organization receiving the exemption shall report each month to the department the total admissions receipts collected from such events sponsored by the organization during the preceding month and shall remit to the department an amount equal to 6 percent of such receipts reduced by any amount remaining under the exemption. Tickets for such events sold by such organizations

shall not reflect the tax otherwise imposed under this section.

7. Also exempt from the tax imposed by this section are entry fees for participation in freshwater fishing tournaments.

8. Also exempt from the tax imposed by this section are participation or entry fees charged to participants in a game, race, or other sport or recreational event if spectators are charged a taxable admission to such event.

9. No tax shall be levied on admissions to any postseason collegiate football game sanctioned by the National Collegiate Athletic Association.

(3) Such taxes shall be paid and remitted at the same time and in the same manner as provided for remitting taxes on sales of tangible personal property, as hereinafter provided. Notwithstanding any other provision of this chapter, the tax on admission to an event at a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility shall be collected at the time of payment for the admission but is not due to the department until the first day of the month following the actual date of the event for which the admission is sold and becomes delinquent on the 21st day of that month.

Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 597 CS Contracting for Efficiency or Conservation Measures by State Agencies
SPONSOR(S): Cannon
TIED BILLS: **IDEN./SIM. BILLS:** SB 278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	4 Y, 0 N, w/CS	Brown	Williamson
2) Water & Natural Resources Committee	9 Y, 0 N	Winker	Lotspeich
3) Fiscal Council		Dixon	Kelly
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill adds conservation and efficiency measures for both water and wastewater to the Guaranteed Energy Performance Savings Contracting Act, and adds water and wastewater efficiency and conservation measures to the types of guaranteed performance savings contracts that may be entered into by agencies. The bill expands the express list of conservation measures that may be contemplated.

The bill may have a positive fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Guaranteed Energy Performance Savings Contracting Act

In 1994, the Legislature enacted the Guaranteed Energy Savings Program,[1] later amended to become the Guaranteed Energy Performance Savings Contracting Act.[2] The program permits agencies, defined as "the state, a municipality, or a political subdivision",[3] to enter into a guaranteed energy performance savings contract, under specified circumstances.[4]

The purpose of a guaranteed energy savings contract is to allow a properly-licensed contractor to create or install energy conservation measures that will reduce the energy or operating costs of an agency facility. The Act contains a number of contract requirements to ensure that the measures will result in a savings to the agency over time, and to ensure that the contractor is financially liable for any failure to achieve such savings.

An "energy conservation measure" is a training program, facility alteration, or equipment purchase to be used in new construction, including an addition to an existing facility, which reduces energy or operating costs.[5] Examples of such measures include insulation, storm windows and doors, automatic energy control systems, and cogeneration systems.

Current law requires that, before the installation of conservation measures, agencies obtain from a qualified provider a report that summarizes the costs of the conservation measures and provides the amount of cost savings.[6] The qualified provider must be selected in compliance with s. 287.055, F.S., which provides for competitive bidding requirements for state agencies wanting to procure professional architectural, engineering, or surveying and mapping services.

A guaranteed energy performance contracting contract must contain the following provisions:

- A written energy guarantee by the qualified provider that the energy or operating cost savings will meet or exceed the cost of energy conservation measures.
- A provision that all payments may be made over time, but may not exceed 20 years from the date of installation and acceptance by the agency.
- A requirement that the qualified provider provide a 100 percent project value bond to the state for its faithful performance, as required by s. 255.05, F.S.
- Provisions for an allocation of any excess savings among the parties.
- The qualified provider must provide an annual reconciliation of the cost savings and if there is a shortfall, the provider must be liable.

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[1] Ch. 94-112, L.O.F., codified at s. 489.145, F.S.
[2] Ch. 2001-81, L.O.F.
[3] Section 489.145(3)(a), F.S.
[4] See Section 489.145(4), F.S.
[5] Section 489.145(3)(b), F.S.
[6] Section 489.145(4), F.S.

- A statement that the contract does not constitute a debt, liability, or obligation of the state.

The Department of Management Services may, within reasonable resources, provide technical assistance to state agencies contracting for energy conservation measures and engage in other activities to promote such contracting. The Office of the Chief Financial Officer may develop model contracts and related documents for use by state agencies and require them to submit contracts to the Office for its approval.

Water and Wastewater Conservation and Efficiency

Both the state Department of Environmental Protection (DEP), each of the state's water management districts, and the federal Environmental Protection Agency (EPA) has each established programs for the efficient use of and conservation of water and wastewater. According to the EPA, conserving water means saving costs for electric power, gas, chemicals, and wastewater disposal. Efficient water use can have major environmental, public health, and economic benefits by helping to improve water quality, maintain aquatic ecosystems, and protecting drinking water sources. According to the EPA, the efficient use of water, through behavioral, operational, or equipment changes, if practiced broadly, can help mitigate the effects of drought.

According to the DEP, protecting the amount and quality of our water resources and implementing efficient wastewater management practices is critical to maintaining sufficient and potable water for domestic, industrial, agricultural, and governmental use. Improperly disposing of wastewater can damage drinking water supply, wildlife, and other important environmental resources.

Effect of Proposed Changes

The bill expands the scope of the Act beyond energy conservation to include water and wastewater conservation and efficiency.

The bill adds the following energy conservation measures:

- Equipment upgrades that improve the accuracy of billable revenue generating systems.
- Automated electronic or remotely controlled systems or measures that reduce direct personnel costs.
- Such other energy, water, or wastewater efficiency or conservation measures as may provide measurable, long-term operating cost reductions or billable revenue increases.
- Cool roof coating.

The bill requires the contractor to include in the report a summary of the costs associated with "operational improvements" if such improvements are the basis for the proposed cost savings.

The bill removes the word "energy" from the section heading of s. 489.145, F.S., and changes the short title to the "Guaranteed Performance Savings Contracting Act," in order to better reflect the additional scope of the act. Similar conforming changes are made throughout the bill. "Water and wastewater" are added to "energy" as the objects of the contracting process, and "efficiency" is added to "conservation" for the types of measures contemplated.

The bill conforms the terminology in s. 287.064, F.S. (addressing the consolidated financing of deferred payment purchases) with the substantive statute by adding "water and wastewater efficiency" to the section.

C. SECTION DIRECTORY:

Section 1 amends s. 489.145, F.S., adding "water and wastewater efficiency" to the scope of the re-titled "Guaranteed Performance Savings Contracting Act;" and adding additional measures to those permitted to achieve conservation and efficiency in energy, water, and wastewater use.

Section 2 amends s. 287.064, F.S., adding "water and wastewater efficiency" to the statute addressing consolidated financing of deferred payment purchases.

Section 3 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that provide energy, water, or wastewater conservation consulting or equipment may have increased business opportunities.

D. FISCAL COMMENTS:

The bill provides an opportunity for agencies to reduce energy, water, and wastewater costs by increasing conservation and efficiency. If the contractor's initial analysis is favorable and conservation measures are installed, the resulting savings are guaranteed by the contractor, pursuant to statute. The bill should have the effect of creating an incentive for agencies to procure guaranteed performance savings contracts and for contractors to maximize the potential savings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 8, 2006, the House Governmental Operations Committee adopted an amendment which adds "cool roof coating" to the express list of conservation measures contained in s. 489.145(3)(b), F.S.

The bill was reported favorably with committee substitute.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to contracting for efficiency or conservation measures by state agencies; amending s. 489.145, F.S.; including water and wastewater efficiency and conservation in the measures encouraged by the Legislature; revising definitions; providing for inclusion of water and wastewater efficiency and conservation measures in guaranteed performance savings contracts entered into by a state agency, municipality, or political subdivision; amending s. 287.064, F.S., relating to consolidated financing of deferred-payment purchases, to conform; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 489.145, Florida Statutes, is amended to read:

489.145 Guaranteed ~~energy~~ performance savings contracting.--

(1) SHORT TITLE.--This section may be cited as the "Guaranteed ~~Energy~~ Performance Savings Contracting Act."

(2) LEGISLATIVE FINDINGS.--The Legislature finds that investment in energy, water, and wastewater efficiency or conservation measures in agency facilities can reduce the amount of energy and water consumed and wastewater to be treated and produce immediate and long-term savings. It is the policy of this state to encourage each agency ~~agencies~~ to invest in energy, water, and wastewater efficiency or conservation measures that provide such reductions ~~reduce energy consumption~~, produce a cost savings for the agency, and, for energy measures, improve the quality of indoor air in public facilities and to operate, maintain, and, when economically feasible, build or renovate existing agency facilities in such a manner as to minimize energy and water consumption or wastewater production and maximize energy, water, and wastewater savings. It is further the policy of this state to encourage agencies to reinvest any ~~energy~~ savings resulting from energy, water, and wastewater efficiency or conservation measures in additional energy, water, and wastewater efficiency or conservation measures ~~efforts~~.

(3) DEFINITIONS.--As used in this section, the term:

(a) "Agency" means the state, a municipality, or a political subdivision.

(b) "Energy, water, and wastewater efficiency or conservation measure" means a training program, facility alteration, or equipment purchase to be used in new facilities or in retrofitting or adding to existing facilities or

infrastructure ~~new construction, including an addition to an existing facility,~~ which reduces energy, water, wastewater, or operating costs and includes, but is not limited to:

1. Insulation of the facility structure and systems within the facility.

2. Storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing, or heat-reflective, glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption.

3. Automatic energy control systems.

4. Heating, ventilating, or air-conditioning system modifications or replacements.

5. Replacement or modifications of lighting fixtures to increase the energy efficiency of the lighting system, which, at a minimum, must conform to the applicable state or local building code.

6. Energy recovery systems.

7. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a facility or complex of facilities.

8. Energy conservation measures that provide long-term operating cost reductions or significantly reduce Btu consumed.

9. Renewable energy systems, such as solar, biomass, or wind systems.

10. Devices that reduce water consumption or wastewater ~~sewer~~ charges.

11. Equipment upgrades that improve the accuracy of billable revenue generating systems.

12. Automated electronic or remotely controlled systems or measures that reduce direct personnel costs.

13. Such other energy, water, or wastewater efficiency or conservation measures as may provide measurable operating cost reductions or billable revenue increases.

14.~~11.~~ Energy storage systems, such as fuel cells and thermal storage.

15.~~12.~~ Energy generating technologies, such as microturbines.

16. Cool roof coating.

17.~~13.~~ Any other repair, replacement, or upgrade of existing equipment.

(c) "Energy, water, and wastewater cost savings" means a measured reduction in the cost of fuel, energy or water consumption, or wastewater production, and stipulated improvement in the operation and maintenance created from the implementation of one or more energy, water, and wastewater efficiency or conservation measures when compared with an established baseline for the previous cost of fuel, energy, or water consumption, or wastewater production, and stipulated operation and maintenance.

(d) "Guaranteed ~~energy~~ performance savings contract" means a contract for the evaluation, recommendation, and implementation of energy, water, and wastewater efficiency or conservation measures, which, at a minimum, shall include:

1. The design and installation of equipment to implement one or more of such measures and, if applicable, operation and maintenance of such measures.

2. The amount of any actual annual savings that meet or exceed total annual contract payments made by the agency for the contract.

3. The finance charges incurred by the agency over the life of the contract.

(e) "Guaranteed ~~energy~~ performance savings contractor" means a person or business that is licensed under chapter 471, chapter 481, or this chapter, and is experienced in the analysis, design, implementation, or installation of energy, water, or wastewater efficiency or conservation measures through ~~energy~~ performance contracts.

(4) PROCEDURES.--

(a) An agency may enter into a guaranteed ~~energy~~ performance savings contract with a guaranteed ~~energy~~ performance savings contractor to significantly reduce energy, water, or wastewater or operating costs of an agency facility through one or more energy, water, and wastewater efficiency or conservation measures.

(b) Before design and installation of energy, water, and wastewater efficiency and conservation measures, the agency must obtain from a guaranteed ~~energy~~ performance savings contractor a report that summarizes the costs associated with the ~~energy conservation~~ measures and provides an estimate of the amount of the associated ~~energy~~ cost savings or operational improvements. The agency and the guaranteed ~~energy~~ performance savings

contractor may enter into a separate agreement to pay for costs associated with the preparation and delivery of the report; however, payment to the contractor shall be contingent upon the report's projection of ~~energy~~ cost savings being equal to or greater than the total projected costs of the design and installation of the report's ~~energy~~ conservation or efficiency measures.

(c) The agency may enter into a guaranteed ~~energy~~ performance savings contract with a guaranteed ~~energy~~ performance savings contractor if the agency finds that the amount the agency would spend on the ~~energy~~ conservation or efficiency measures will not likely exceed the amount of the associated ~~energy~~ cost savings for up to 20 years from the date of installation, based on the life cycle cost calculations provided in s. 255.255, if the recommendations in the report were followed and if the qualified provider or providers give a written guarantee that such ~~the energy~~ cost savings will meet or exceed the costs of the system. The contract may provide for installment payments for a period not to exceed 20 years.

(d) A guaranteed ~~energy~~ performance savings contractor must be selected in compliance with s. 287.055; except that if fewer than three firms are qualified to perform the required services, the requirement for agency selection of three firms, as provided in s. 287.055(4)(b), and the bid requirements of s. 287.057 do not apply.

(e) Before entering into a guaranteed ~~energy~~ performance savings contract, an agency must provide published notice of the meeting in which it proposes to award the contract, the names of

the parties to the proposed contract, and the contract's purpose.

(f) A guaranteed ~~energy~~ performance savings contract may provide for financing, including tax exempt financing, by a third party. The contract for third party financing may be separate from the ~~energy~~ performance savings contract. A separate contract for third party financing must include a provision that the third party financier must not be granted rights or privileges that exceed the rights and privileges available to the guaranteed ~~energy~~ performance savings contractor.

(g) In determining the amount the agency will finance to acquire the efficiency or ~~energy~~ conservation measures, the agency may reduce such amount by the application of any grant moneys, rebates, or capital funding available to the agency for the purpose of buying down the cost of the guaranteed ~~energy~~ performance savings contract. However, in calculating the life cycle cost as required in paragraph (c), the agency shall not apply any grants, rebates, or capital funding.

(5) CONTRACT PROVISIONS.--

(a) A guaranteed ~~energy~~ performance savings contract must include a written guarantee that may include, but is not limited to the form of, a letter of credit, insurance policy, or corporate guarantee by the guaranteed ~~energy~~ performance savings contractor that annual associated ~~energy~~ cost savings will meet or exceed the amortized cost of the efficiency and ~~energy~~ conservation measures.

(b) The guaranteed ~~energy~~ performance savings contract must provide that all payments, except obligations on termination of the contract before its expiration, may be made over time, but not to exceed 20 years from the date of complete installation and acceptance by the agency, and that the annual savings are guaranteed to the extent necessary to make annual payments to satisfy the guaranteed ~~energy~~ performance savings contract.

(c) The guaranteed ~~energy~~ performance savings contract must require that the guaranteed ~~energy~~ performance savings contractor to whom the contract is awarded provide a 100-percent public construction bond to the agency for its faithful performance, as required by s. 255.05.

(d) The guaranteed ~~energy~~ performance savings contract may contain a provision allocating to the parties to the contract any annual associated ~~energy~~ cost savings that exceed the amount of the associated ~~energy~~ cost savings guaranteed in the contract.

(e) The guaranteed ~~energy~~ performance savings contract shall require the guaranteed ~~energy~~ performance savings contractor to provide to the agency an annual reconciliation of the guaranteed associated ~~energy~~ cost savings. If the reconciliation reveals a shortfall in such annual ~~energy~~ cost savings, the guaranteed ~~energy~~ performance savings contractor is liable for such shortfall. If the reconciliation reveals an excess in such annual ~~energy~~ cost savings, the excess savings may be allocated under paragraph (d) but may not be used to

cover potential ~~energy~~ cost savings shortages in subsequent contract years.

(f) The guaranteed ~~energy~~ performance savings contract must provide for payments of not less than one-twentieth of the price to be paid within 2 years from the date of the complete installation and acceptance by the agency, and the remaining costs to be paid at least quarterly, not to exceed a 20-year term, based on life cycle cost calculations.

(g) The guaranteed ~~energy~~ performance savings contract may extend beyond the fiscal year in which it becomes effective; however, the term of any contract expires at the end of each fiscal year and may be automatically renewed annually for up to 20 years, subject to the agency making sufficient annual appropriations based upon continued realized energy, water, or wastewater savings.

(h) The guaranteed ~~energy~~ performance savings contract must stipulate that it does not constitute a debt, liability, or obligation of the state.

(6) PROGRAM ADMINISTRATION AND CONTRACT REVIEW.--The Department of Management Services, with the assistance of the Office of the Chief Financial Officer, may, within available resources, provide technical assistance to state agencies contracting for energy, water, and wastewater efficiency or conservation measures and engage in other activities considered appropriate by the department for promoting and facilitating guaranteed ~~energy~~ performance contracting by state agencies. The Office of the Chief Financial Officer, with the assistance of the Department of Management Services, may, within available

resources, develop model contractual and related documents for use by state agencies. Prior to entering into a guaranteed ~~energy~~ performance savings contract, any contract or lease for third-party financing, or any combination of such contracts, a state agency shall submit such proposed contract or lease to the Office of the Chief Financial Officer for review and approval.

Section 2. Subsection (10) of section 287.064, Florida Statutes, is amended to read:

287.064 Consolidated financing of deferred-payment purchases.--

(10) Costs incurred pursuant to a guaranteed ~~energy~~ performance savings contract, including the cost of energy, water, and wastewater efficiency and conservation measures, each as defined in s. 489.145, may be financed pursuant to a master equipment financing agreement; however, the costs of training, operation, and maintenance may not be financed. The period of time for repayment of the funds drawn pursuant to the master equipment financing agreement under this subsection may exceed 5 years but may not exceed 10 years.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 897 CS Florida Retirement System
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Mitchell	Williamson
2) Local Government Council	7 Y, 1 N	Nelson	Hamby
3) Fiscal Council		Dobbs	Kelly
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The CS for HB 897 expands the Special Risk Class of the Florida Retirement System by including any person employed as a pilot or an aerial applicator by an authorized state agency or municipality, county or special district. These pilots or aerial applicators must be licensed by the Federal Aviation Administration and licensed or certified as an arthropod control applicator as required by the Department of Agriculture and Consumer Services. These pilots or aerial applicators also must have as their primary duties and responsibilities, piloting or co-piloting, often at low altitudes, a rotary-wing or fixed-wing aircraft for chemical application of pesticides for controlling mosquitoes or other arthropods.

The bill makes legislative findings and declares an important state interest.

The bill is estimated to have an annual fiscal impact of approximately $225,823 on local employers. The bill appears to have no fiscal impact on state expenditures.

The bill provides an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government

This bill expands the Special Risk Class to include certain pilots and aerial applicators who fly aircraft and apply pesticides to control mosquitoes or other arthropods.

Empower families

Certain pilots or aerial applicators employed by governmental agencies could realize increased retirement benefits as a result of the bill.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Mosquito Control in Florida

Chapter 388, F.S., provides for the creation and operation of mosquito control districts. Cities, towns and counties, or any portion thereof, are authorized to create special taxing districts for the control of arthropods,[1] to include mosquitoes.[2] The authority provided in s. 125.01, F.S., which sets forth the statutory powers of counties, is the preferred method for creating these mosquito control districts; yet, districts which were established under the former petition process may continue to operate.[3] Some mosquito control districts have been established by special act of the Legislature.[4]

According to the Bureau of Entomology and Pest Control within the Department of Agriculture and Consumer Services and the Department of Management Services, there currently are 57 mosquito control districts:

- 35 districts are operated by boards of county commissioners;
- seven districts are dependent districts of a county; and
- 15 districts are independent special districts.[5]

All of the employees of the mosquito control districts which are operated by a county or under a county participate in the Florida Retirement System. Thirteen of the independent special districts participate in the Florida Retirement System.[6]

Twenty-one of these mosquito control districts utilize aircraft for mosquito control—although four of the counties contract for these pilot services.[7] The Department of Management Services estimates that there are 35 pilots employed in full-time positions by the various mosquito control districts.[8]

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[1] Section 388.011, F.S. (defining "arthropod" as those insects of public health or nuisance importance, including all mosquitoes, midges, sand flies, dog flies, yellow flies and house flies).
[2] Section 388.021(1), F.S.
[3] Section 388.021(2), F.S.
[4] See, *e.g.*, ch. 99-449, L.O.F. (Anastasia Mosquito Control District; St. Johns Co.).
[5] Florida Department of Agriculture and Consumer Services, Division. of Agriculture Environmental Services, Bureau of Entomology and Pest Control, *Mosquito Control Directory*, available at http://www.flaes.org/aes-ent/mosquito/mosqcontroldirectory.html (last visited Mar. 29, 2006); Department of Management Services., HB 897 (2006) Substantive Bill Analysis (Mar. 14, 2006) (on file with Department) at p. 7) [hereinafter "DMS Analysis"].
[6] DMS Analysis at p. 7.
[7] *Id.*
[8] *Id.* at p. 8.

The Florida Retirement System

Chapter 121, F.S., the "Florida Retirement System Act," governs the Florida Retirement System (FRS). The FRS is administered by the secretary of the Department of Management Services through the Division of Retirement.[9]

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, and community colleges and universities.[10] The FRS also has participating employees in the 151 cities and 186 independent special districts who have elected to join the system.[11]

The FRS offers a defined benefit plan that provides retirement, disability and death benefits for nearly 600,000 active members and over 270,000 retirees, surviving beneficiaries, and Deferred Retirement Option Program participants.[12] Members of the FRS belong to one of five membership classes:

Regular Class[13]	570,888 members	88.00%
Special Risk Class[14]	68,466 members	10.59%
Special Risk Administrative Support Class[15]	80 members	0.01%
Senior Management Service Class[16]	6,823 members	1.10%
Elected Officers Class[17]	2,122 members	0.30%

Each class is separately funded through an employer contribution of a percentage of the gross compensation of the member based on the costs attributable to members of that class and as provided in ch. 121, F.S.[18]

The Special Risk Class and its Expansion

The Special Risk Class of the FRS was created to recognize that certain employees, because they perform work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees.[19] As such, members of the Special Risk Class can retire at age 55 or with 25 years of creditable service.[20] Members of the Special Risk Class also earn a higher normal retirement benefit of three percent of the member's average final compensation.[21] These increased benefits are funded through higher employer contribution rates: 17.37 percent of gross compensation, effective July 1, 2005, and 21.91 percent, effective July 1, 2006.[22]

The only employees originally in the Special Risk Class were law enforcement officers, correctional officers and firefighters.[23] Starting in 1999, however, the Legislature began to expand the membership of this class:

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[9] Section 121.025, F.S.
[10] Florida Department of Management Services, *Florida Division of Retirement. Main Page* (visited Jan. 11, 2006) < http://www.frs.state.fl.us/>.
[11] *Id.*
[12] *Id.*
[13] Section 121.021(12), F.S.
[14] Section 121.0515, F.S.
[15] Section 121.0515(7), F.S.
[16] Section 121.055, F.S.
[17] Section 121.052, F.S.
[18] See, *e.g.*, Section. 121.055(3)(a)1., F.S.
[19] *Id.*
[20] Section 121.021(29), F.S. (defining normal retirement date; this contrasts with members of the Regular Class who can retire at age 62 or with 30 years of credible service).
[21] Section 121.091(1)(a)2.h., F.S. (compared with 1.60 percent to 1.68 percent for members of the Regular Class).
[22] Section 121.71(3), F.S. (compared with 6.67 percent, effective July 1, 2005, and 9.53 percent, effective July 1, 2006, for members of the Regular Class).
[23] Ch. 78-308, L.O.F.; codified as s.121.0515, F.S.

1999	Emergency Medical Technicians and Paramedics[24]
2000	Community-Based Correctional Probation Officers[25]
2000	24 types of employees of correctional or forensic facilities or institutions[26]
2001	Youth Custody Officers[27]
2005	Employees of a law enforcement agency or a medical examiner's office who are employed in a forensic discipline[28]

This bill continues the expansion of the Special Risk Class by including in the definition of "special risk member" and the criteria for special risk membership any person who is employed as a pilot or aerial applicator by an authorized state agency or municipality, county or special district,[29] and who has the following qualifications:

- licensed as a pilot by the Federal Aviation Administration;
- licensed or certified as an arthropod control applicator as required by the Department of Agriculture and Consumer Services; and
- has as his or her primary duties and responsibilities, piloting or co-piloting, often at low altitudes, a rotary-wing or fixed-wing aircraft for chemical application of pesticides for controlling mosquitoes or other arthropods.

Constitutional Requirements for Retirement or Pension System Increases

Section 14 of Art. X of the State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.[30] Because employers will pay an additional contribution rate of 10.70 percent of salary for these mosquito control pilots, the bill appears to satisfy this constitutional requirement.[31]

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[24] Ch. 99-392, L.O.F., s. 23.
[25] Ch. 2000-169, L.O.F., s. 29.
[26] *Id.* (The following employees must spend at least 75 percent of their time performing duties which involve contact with patients or inmates to qualify for the Special Risk Class: dietitian; public health nutrition consultant; psychological specialist; psychologist; senior psychologist; regional mental health consultant; psychological services director-DCF; pharmacist; senior pharmacist (class codes 5248 and 5249); dentist; senior dentist; registered nurse; senior registered nurse; registered nurse specialist; clinical associate; advanced registered nurse practitioner; advanced registered nurse practitioner specialist; registered nurse supervisor; senior registered nurse supervisor; registered nursing consultant; quality management program supervisor; executive nursing director; speech and hearing therapist; and pharmacy manager.).
[27] Ch. 2001-125, L.O.F., s. 43.
[28] Ch. 2005-167, L.O.F., s. 1; codified as s.121.0515(2)(h), F.S. (The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility; the forensic discipline must be recognized by the International Association for Identification and the member must qualify for active membership in the International Association for Identification). See, *also* International Association for Identification at http://www.theiai.org/ (last visited Mar. 27, 2006).
[29] HB 897 CS (2005) (authorized under ch. 388, F.S., or by special act).
[30] Part VII of ch. 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.
[31] DMS Analysis at pp. 9-10.

C. SECTION DIRECTORY:

Section 1: Creates paragraph (f) within subsection (15) of s. 121.021, F.S., to expand the definition of special risk member to include mosquito control pilots.

Section 2: Amends subsection (2) of s.121.0515, F.S., to include mosquito control pilots.

Section 3: Declares a statement of important state interest.

Section 4: Provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Management Services noted the following fiscal impact for the bill:

> Based on current salary information available for mosquito control pilots who are members of the Florida Retirement System, it appears that the annual salary for such pilots ranges from about $36,900 to around $85,000 (averaging about $60,300). While the actual cost to Florida public employers is unknown, if in fact there were just 35 such pilots working fulltime who earn an average annual salary of $60,300, the statewide cost to affected employers in increased retirement contributions for FY 2005/06 would be $225,823.[32]

[32] *Id.* at p. 8.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill is expected to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. Because the bill provides that it fulfills an important state interest and the expenditures required by the bill appear to apply to all persons similarly situated, including the state and local governments, the bill appears to satisfy the requirements of s. 18 of Art. VII of the State Constitution.[33]

2. Other:

Section 14, Art. X of the State Constitution

The Department of Management Services provided the following fiscal note from the enrolled actuary regarding this bill:

> For Special Risk membership, the employers of the new special risk members will pay an additional 10.70% of pay (the difference between the Regular and Special Risk Class rates, for the period from July 1, 2005 – June 30, 2006) for each affected member, and the bill therefore complies with the requirements of article X, section 14 of the Florida Constitution and of chapter 112, part VII, Florida Statutes. Any changes to the demographics and actuarial experience of the Special Risk Class resulting from this bill that result in additional fiscal impact will be reflected in future valuations and experience studies of the Florida Retirement System.[34]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Continued Expansion of the Special Risk Class

This bill proposes an additional expansion of the Special Risk Class. The Legislature ultimately must determine whether these pilots or aerial applicators perform work that is consistent with the intent of this class.[35] The Legislature also must be aware, as noted by the Department of Management Services, that this bill may encourage other groups to seek membership in the Special Risk Class or create inequities between different positions.[36]

- *Encouraging Other Groups:* Other pilots, for example, may seek to become part of the Special Risk Class "based solely on their jobs as aviators, rather than on their performing work that is

[33] Section 18 of Art. VII of the State Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

[34] *Id.* at pp. 9-10.

[35] Section 121.0515(1), F.S. (work that is physically demanding or arduous or that requires extraordinary agility and mental acuity, may need to retire at an earlier age with less service than other types of employees).

[36] *Id.*

physically demanding or arduous, or work that requires extraordinary agility and mental acuity, such that after age 55 (or 25 years of service) the member may no longer be able to perform the required work without risking the health and safety of the member, the public, or the member's co-workers."[37]

- *Creating Inequities:* There are similarly situated employees who are not eligible for the Special Risk Class: a person who mixes and dispenses the pesticides while flying with the pilot, or drivers and pesticide applicators who dispense pesticides from ground transport vehicles.[38]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with a committee substitute. The amendment provided further definition and criteria for the mosquito control pilots who are included in the Special Risk Class.

[37] *Id.*
[38] *Id.*

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Retirement System; amending ss. 121.021 and 121.0515, F.S.; providing membership in the Special Risk Class for persons employed as pilots or aerial applicators authorized to provide mosquito control services; providing a definition; providing a declaration of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) is added to subsection (15) of section 121.021, Florida Statutes, to read:

121.021 Definitions.--The following words and phrases as used in this chapter have the respective meanings set forth unless a different meaning is plainly required by the context:

(15)

(f) Effective October 1, 2006, the term "special risk member" includes any member who is employed as a pilot or an aerial applicator by a municipality, county, special district,

or state agency that is authorized to provide mosquito control services under chapter 388 or by special act and who meets the criteria set forth in s. 121.0515(2)(i).

Section 2. Subsection (2) of section 121.0515, Florida Statutes, is amended to read:

121.0515 Special risk membership.--

(2) CRITERIA.--A member, to be designated as a special risk member, must meet the following criteria:

(a) The member must be employed as a law enforcement officer and be certified, or required to be certified, in compliance with s. 943.1395; however, sheriffs and elected police chiefs shall be excluded from meeting the certification requirements of this paragraph. In addition, the member's duties and responsibilities must include the pursuit, apprehension, and arrest of law violators or suspected law violators; or the member must be an active member of a bomb disposal unit whose primary responsibility is the location, handling, and disposal of explosive devices; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included;

(b) The member must be employed as a firefighter and be certified, or required to be certified, in compliance with s. 633.35 and be employed solely within the fire department of a local government employer or an agency of state government with firefighting responsibilities. In addition, the member's duties

and responsibilities must include on-the-scene fighting of fires, fire prevention, or firefighter training; direct supervision of firefighting units, fire prevention, or firefighter training; or aerial firefighting surveillance performed by fixed-wing aircraft pilots employed by the Division of Forestry of the Department of Agriculture and Consumer Services; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel, shall not be included and further provided that all periods of creditable service in fire prevention or firefighter training, or as the supervisor or command officer of a member or members who have such responsibilities, and for which the employer paid the special risk contribution rate, shall be included;

(c) The member must be employed as a correctional officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, or while on work detail outside the facility, or while being transported; or the member must be the supervisor or command officer of a member or members who have such responsibilities; provided, however, administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in

accounting, purchasing, legal, and personnel, shall not be included; however, wardens and assistant wardens, as defined by rule, shall participate in the Special Risk Class;

(d) The member must be employed by a licensed Advance Life Support (ALS) or Basic Life Support (BLS) employer as an emergency medical technician or a paramedic and be certified in compliance with s. 401.27. In addition, the member's primary duties and responsibilities must include on-the-scene emergency medical care or direct supervision of emergency medical technicians or paramedics, or the member must be the supervisor or command officer of one or more members who have such responsibility. However, administrative support personnel, including, but not limited to, those whose primary responsibilities are in accounting, purchasing, legal, and personnel, shall not be included;

(e) The member must be employed as a community-based correctional probation officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, and counseling of assigned inmates, probationers, parolees, or community controllees within the community; or the member must be the supervisor of a member or members who have such responsibilities. Administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal services, and personnel management, shall not be included; however,

probation and parole circuit and deputy circuit administrators shall participate in the Special Risk Class;

(f) The member must be employed in one of the following classes and must spend at least 75 percent of his or her time performing duties which involve contact with patients or inmates in a correctional or forensic facility or institution:

1. Dietitian (class codes 5203 and 5204);
2. Public health nutrition consultant (class code 5224);
3. Psychological specialist (class codes 5230 and 5231);
4. Psychologist (class code 5234);
5. Senior psychologist (class codes 5237 and 5238);
6. Regional mental health consultant (class code 5240);
7. Psychological Services Director--DCF (class code 5242);
8. Pharmacist (class codes 5245 and 5246);
9. Senior pharmacist (class codes 5248 and 5249);
10. Dentist (class code 5266);
11. Senior dentist (class code 5269);
12. Registered nurse (class codes 5290 and 5291);
13. Senior registered nurse (class codes 5292 and 5293);
14. Registered nurse specialist (class codes 5294 and 5295);
15. Clinical associate (class codes 5298 and 5299);
16. Advanced registered nurse practitioner (class codes 5297 and 5300);
17. Advanced registered nurse practitioner specialist (class codes 5304 and 5305);
18. Registered nurse supervisor (class codes 5306 and 5307);

19. Senior registered nurse supervisor (class codes 5308 and 5309);

20. Registered nursing consultant (class codes 5312 and 5313);

21. Quality management program supervisor (class code 5314);

22. Executive nursing director (class codes 5320 and 5321);

23. Speech and hearing therapist (class code 5406); or

24. Pharmacy manager (class code 5251);

(g) The member must be employed as a youth custody officer and be certified, or required to be certified, in compliance with s. 943.1395. In addition, the member's primary duties and responsibilities must be the supervised custody, surveillance, control, investigation, apprehension, arrest, and counseling of assigned juveniles within the community; ~~or~~

(h) The member must be employed by a law enforcement agency or medical examiner's office in a forensic discipline recognized by the International Association for Identification and must qualify for active membership in the International Association for Identification. The member's primary duties and responsibilities must include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or both, or the member must be the direct supervisor, quality management supervisor, or command officer of one or more individuals with such responsibility. Administrative support personnel, including, but not limited to, those whose primary responsibilities are clerical or in

accounting, purchasing, legal, and personnel, shall not be included; or.

(i) The member must be employed as a pilot or an aerial applicator by a municipality, county, special district, or state agency that is authorized to provide mosquito control services under chapter 388 or by special act, must be licensed as a pilot by the Federal Aviation Administration, and must satisfy any licensure or certification requirements established by the Department of Agriculture and Consumer Services pursuant to s. 388.361(4). In addition, the member's primary duties and responsibilities must include piloting or copiloting, often at low altitudes, a rotary-wing or fixed-wing aircraft for chemical application of pesticides for controlling mosquitoes or other arthropods.

Section 3. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems. These persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in a sound actuarial manner, as required by Section 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature hereby determines and declares that this act fulfills an important state interest.

Section 4. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 979 CS Property Tax Administration
SPONSOR(S): Seiler
TIED BILLS: **IDEN./SIM. BILLS:** SB 490

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N, w/CS	DiVagno	Hamby
2) Finance & Tax Committee	6 Y, 0 N	Monroe	Diez-Arguelles
3) Fiscal Council		Monroe KDSM	Kelly cb
4)			
5)			

SUMMARY ANALYSIS

The Department of Revenue (DOR) conducts an in-depth review of every property appraiser's assessment rolls at least every two years. DOR then creates a report on each assessment roll. Included in the report is DOR's confidence level in the property appraiser's rolls based on DOR's use of various statistical and analytical measures, which are also included in the report. DOR then forwards this report to the "Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee", and the property appraiser. Once DOR presents the property appraiser with its report, the report becomes a public record.

This bill changes the committees in the Legislature that DOR would submit its report to, "the committees of the Senate and the House of Representatives with oversight responsibilities for taxation." The bill also requires DOR to notify the chairperson of the appropriate county commission, or the corresponding official under a consolidated charter, that its report is available at their request. When a written request from the chairperson, or corresponding official, is received by DOR, DOR must provide them a copy within 90 days.

This bill would take effect July 1, 2006.

The bill will have no impact on state or local revenues, and an insignificant operational impact on the Department of Revenue.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the duties of the Department of Revenue by requiring them to notify county chairpersons of the availability of a report, and forward a copy of its report upon request.

B. EFFECT OF PROPOSED CHANGES:

Current Situation in Assessment Rolls:

Property appraisers[1] are required to assess all property in their county and prepare assessment rolls for all real property and tangible personal property.[2] An assessment roll is a record of all taxable property within the tax district which is completed, verified, and reported to the Department of Revenue (DOR) by the property appraiser. DOR has supervisory authority over property appraisers under chapter 195, F.S. DOR prescribes forms, rules and regulations for assessing and collecting taxes, establishment of standards of value, manual of instructions, classification of property, budgetary processes, and review of assessment rolls.

Each assessment roll is submitted to DOR for review. The purpose of the review is to determine that the rolls meet the appropriate requirements of law relating to form and just value.[3] DOR is required to conduct an in-depth review of the assessment rolls for each county no less than once every two years. At a minimum, DOR is to review the level of assessment for the county in relation to just value of each of the various classifications of property found in s. 195.0969(3)(a), F.S. The in-depth review may include a review of the proceedings of the value adjustment board and the audit or review of procedures used by the counties to appraise property.

Within 120 days after receiving a county's assessment roll, or within 10 days after approving it, whichever is later, DOR is to finalize its review and forward its findings to the "Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee", and the appropriate property appraiser. DOR is to include in its findings a statement of the confidence interval[4] for the median, other measures studied, and the roll as a whole, and related statistical and analytical information.[5] DOR's report becomes a public record, subject to chapter 119, F.S., once it is released to the property appraiser.[6]

Effect of Bill:

This bill changes the committees in the Legislature DOR is to submit its findings to. Rather than submitting its findings to the specific committees within the Senate and House, DOR is to submit them to the committees of the Senate and House with oversight responsibilities for taxation. This change will allow the statute to remain accurate when the committees that handle taxation issues change.

The bill also requires DOR to notify the chairperson of the county commission, or the corresponding official, that its report is available upon request. If the chairperson of the county commission, or the

[1] Property Appraisers are independently elected, constitutional officers. Art. VII, section 1(d), Florida Constitution.
[2] Sections 192.011 and 193.114, F.S.
[3] Section 193.1142(1), F.S.
[4] The confidence interval is a statistical measure of the reliability of DOR's sample. E-mail from David Beggs of DOR (March 8, 2006).
[5] Section 195.096(2)(f), F.S.
[6] Section 195.096(2)(e), F.S.

corresponding official, submits a written request for the report, DOR must forward a copy within 90 days. The copy is required to include the confidence interval for the median and such other measures for each classification or subclassification studied and for the roll as a whole, and all statistical and analytical details.

C. SECTION DIRECTORY:

Section 1: Amends paragraph (f) of subsection (2) of s. 195.096, F.S., to change committees to which reports are forwarded and require notification and forwarding by the Department of Revenue.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Although the impact is expected to be insignificant, the exact operational impact on the Department of Revenue is yet to be determined.[7]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

[7] Department of Revenue: Bill Analysis (HB 979).

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Proponents (on original bill):

The Broward County Property Appraiser (Lori N. Parrish) is a proponent of the bill. She supports the bill as a current property appraiser and former County Commissioner and School Board Member. During her years of service, she was unaware, as she asserts many are, that these reports existed. When she became the property appraiser and learned of the reports, she found out that few in the office knew of these reports and there were no records of the reports in the office. Upon obtaining copies of the reports from the Department of Revenue, it was discovered that Broward County had been out of compliance for a number of years. She asserts that had these reports been made known to the public, the property appraiser would have been forced to fix the problem or face the threat of not being reelected. The problem, she asserts, is not the availability of the report, but rather knowing it even exists. She hopes that the public scrutiny and examination will improve public performance, ensuring every Florida resident pays their fair share, not only in Broward County, but in all counties within Florida.[8]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Council on Local Government adopted one amendment on March 8, 2006. As originally drafted, the bill required the property appraiser to automatically forward a copy of the report to the county commission within 90 days. The amendment provides that DOR will notify the county commission that the report is available. Upon request, DOR will forward the report to the chairperson of the county or the corresponding official within 90 days. The bill, as amended, was reported favorably with committee substitute.

[8] E-mail from Lori N. Parrish, May 20, 2006.

CHAMBER ACTION

The Local Government Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to property tax administration; amending s. 195.096, F.S.; requiring the Department of Revenue to notify certain local government officers of the availability on request of department findings regarding department review of the county tax assessment roll; requiring the department to provide a copy of such findings to a requesting party within a time certain; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) of subsection (2) of section 195.096, Florida Statutes, is amended to read:

195.096 Review of assessment rolls.--

(2) The department shall conduct, no less frequently than once every 2 years, an in-depth review of the assessment rolls of each county. The department need not individually study every use-class of property set forth in s. 195.073, but shall at a

minimum study the level of assessment in relation to just value of each classification specified in subsection (3). Such in-depth review may include proceedings of the value adjustment board and the audit or review of procedures used by the counties to appraise property.

(f) Within 120 days following the receipt of a county assessment roll by the executive director of the department pursuant to s. 193.1142(1), or within 10 days after approval of the assessment roll, whichever is later, the department shall complete the review for that county and forward its findings, including a statement of the confidence interval for the median and such other measures as may be appropriate for each classification or subclassification studied and for the roll as a whole, employing a 95-percent level of confidence, and related statistical and analytical details to the committees of the Senate and the House of Representatives with oversight responsibilities for taxation ~~Finance, Taxation, and Claims Committee; the House Finance and Taxation Committee;~~ and to the appropriate property appraiser. Upon releasing its findings, the department shall notify the chairperson of the appropriate county commission or the corresponding official under a consolidated charter that the department's findings are available upon request. Within 90 days after receiving a written request from the chairperson of the appropriate county commission or the corresponding official under a consolidated charter, the department shall provide a copy of its findings to the requesting party, including the confidence interval for the median and such other measures for each classification or

subclassification studied and for the roll as a whole and related statistical and analytical details.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 987 CS Tax on Sales, Use, and Other Transactions
SPONSOR(S): Gottlieb
TIED BILLS: **IDEN./SIM. BILLS:** SB 1590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Education Appropriations Committee	16 Y, 0 N, w/CS	Eggers	Hamon
2) Fiscal Council		Eggers ME	Kelly CL
3)			
4)			
5)			

SUMMARY ANALYSIS

Effective January 1, 2007, sales tax dealers entitled to a collection allowance pursuant to s. 212.12, F.S., may elect to forego the collection allowance and direct that it be deposited into the Educational Enhancement Trust Fund. The election must be made with the timely filing of a return and cannot be rescinded once made. If a dealer making the election files a delinquent return, underpays the tax, or files an incomplete return, the amount transferred into the Educational Enhancement Trust Fund shall be the collection allowance remaining after resolution of liability for all tax, interest, and penalty due.

The maximum amount of collection allowance is $30 per month for each sales dealer. To the degree that sales tax dealers donate their collection allowance to the Educational Enhancement Trust Fund, such trust fund will realize an increase in revenues to the benefit of public education. The increase to the trust fund can not be determined.

The bill appropriates $112,920 from the General Revenue Fund to the Department of Revenue for the purpose of administering the program.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility—The bill authorizes sales tax dealers entitled to a collection allowance to forgo the collection allowance and direct that it be deposited into the Educational Enhancement Trust Fund.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 212, F.S., levies a 6 percent sales and use tax on most sales of tangible personal property and a limited number of services. Local governments are authorized to levy numerous types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. Under the provisions of s. 212.054, F.S., the local discretionary sales surtaxes apply to all transactions "subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions" by chapter 212, F.S. and on communications services by chapter 202, F.S. Section 212.0305, F.S., authorizes the levy of the local option Convention Development Tax at the rate of 3 percent in Miami-Dade County, and at the rate of 2 percent in Duval County and Volusia County.

Section 212.12, F.S., provides sales and use tax dealers a collection allowance of 2.5 percent of the amount of the tax due for the purpose of compensating dealers for the keeping of prescribed records, filing timely returns, and proper accounting and remitting of taxes. No collection allowance is allowed on tax collected and remitted in excess of $1,200 per month, resulting in a maximum collection allowance of $30 per month for the majority of dealers. The dealer's collection allowance does not apply to the rental car surcharge[1], the waste tire fee[2], the lead-acid battery fee[3], or the motor vehicle warranty fee[4].

Article X, Sec. 15, of the State Constitution, provides for a state operated lottery. Chapter 24, F.S., provides the statutory authority for the state lottery. Section 24.121(2), F.S., provides that variable percentages of the gross revenue, as determined by the Department of the Lottery, from the sale of on-line and instant lottery tickets and other earned revenue shall be deposited into the Educational Enhancement Trust Fund to be administered by the Department of Education. Funds from the Educational Enhancement Trust Fund shall be used to the benefit of public education as provided for in s. 24.121, F.S.

Effect of Proposed Changes

The bill amends s. 212.12(1), F.S., creating paragraph (c), providing that sales tax dealers entitled to a collection allowance pursuant to s. 212.12, F.S., may elect to forego the collection allowance and direct that it be transferred into the Educational Enhancement Trust Fund. The election must be made with the timely filing of a return and cannot be rescinded once made. If a dealer making the election files a delinquent return, underpays the tax, or files an incomplete return, the amount deposited into the Educational Enhancement Trust Fund shall be the collection allowance remaining after resolution of liability for all tax, interest, and penalty due. The Department of Education shall distribute the remaining amount from the trust fund to the school districts that have adopted resolutions stating that those funds will be used to ensure that up-to-date technology is purchased for the classrooms in the district and that

[1] Section 212.0606, F.S.
[2] Section 403.718, F.S.
[3] Section 403.7185, F.S.
[4] Section 681.117, F.S.

teachers are trained in the use of that technology. Revenues collected in districts that do not adopt such a resolution shall be equally distributed to districts that have adopted such resolutions.

The bill provides that the election to forego the collection allowance applies to all taxes, surtaxes, and any local option taxes administered under chapter 212, F.S., and remitted directly to the Department of Revenue. This election does not apply to any locally imposed and self-administered convention development tax[5], tourist development tax[6], or tourist impact tax[7] administered under chapter 212, F.S.

The bill provides that notwithstanding the provisions of chapter 120, F. S., to the contrary, the Department of Revenue may adopt rules to carry out the amendments made by this act to s. 212.12, F.S.

The bill appropriates the sum of $112,920 from the General Revenue Fund to the Department of Revenue for the purpose of administrating the amendments to s. 212.12, F.S., made by this act. The bill authorizes the Department of Revenue to retain all of the dealer collection allowance revenues directed to be transferred into the Educational Enhancement Trust Fund until the $112,920 General Revenue appropriation is recovered.

The bill requires that revenues from the dealer collection allowances shall be transferred quarterly from the General Revenue Fund to the Educational Enhancement Trust Fund and that the Department of Revenue shall provide to the Department of Education quarterly information about such revenues by county to which the collection allowance was attributed.

The bill provides that this act shall take effect January 1, 2007.

C. SECTION DIRECTORY:

Section 1. Amends s. 212.12(1), F.S., creating paragraph (c), providing that sales tax dealers entitled to a collection allowance pursuant to s. 212.12, F.S., may elect to forego the collection allowance and direct that it be transferred into the Educational Enhancement Trust Fund.

Section 2. Provides that notwithstanding the provisions of chapter 120, F. S., to the contrary, the Department of Revenue may adopt rules to carry out the amendments made by this act to s. 212.12, F.S.

Section 3. Appropriates the sum of $112,920 from the General Revenue Fund to the Department of Revenue for the purpose of administrating the amendments to s. 212.12, F.S., made by this act.

Section 4. Requires that revenues from the dealer collection allowances shall be transferred quarterly from the General Revenue Fund to the Educational Enhancement Trust Fund.

Section 5. Provides that this act shall take effect January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[5] Section 212.0305, F.S.
[6] Section 125.0104, F.S.
[7] Section 125.0108, F.S.

Sales and use tax dealers may elect to donate their collection allowance to the Educational Enhancement Trust Fund. By doing this, such dealers will forgo a maximum dealer collection allowance of $30 a month, which is deducted from the total of all taxes collected and remitted on Forms DR-15 and DR-15EZ, Sales and Use Tax Returns.

To the degree that sales tax dealers donate their collection allowance to the Educational Enhancement Trust Fund, such trust fund will realize an increase in revenues to the benefit of public education. The increase to the trust fund can not be determined.

2. Expenditures:

In order to administer the bill properly, the Department of Revenue (DOR) would be required to modify its sales and use tax returns forms (DR-15 and DR-15EZ in both hardcopy and electronic formats) to include a check box option directing the DOR to transfer the collection allowance into the Educational Enhancement Trust Fund. This will require computer programming of SAP to identify the amounts to be transferred to the trust fund and a Tax Information Publication (TIP) would need to be sent to all sales and use tax dealers to allow them sufficient time to make internal systems changes. The DOR estimates the cost of implementing this bill to be $112,920. The bill appropriates $112,920 to the DOR to administer the program. The bill specifies that the DOR shall retain all of the dealer collection allowances transferred in the Educational Enhancement Trust Fund until the $112,920 is recovered.

B. FISCAL IMPACT ON LOCAL GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "FISCAL IMPACT ON STATE GOVERNMENT."

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill does not require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue is granted rule making authority to carry out the amendment to section 212.12, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Education Appropriations Committee adopted an amendment revising the General Revenue Fund appropriation to the Department of Revenue from $36,465 to $112,920 to administer the program. The amendment clarified that collection allowances are deposited into the General Revenue Fund and subsequently transferred to the Educational Enhancement Trust Fund.

CHAMBER ACTION

The Education Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the tax on sales, use, and other transactions; amending s. 212.12, F.S.; authorizing a dealer to elect to forego the collection allowance and direct that collection allowance revenues be transferred to the Educational Enhancement Trust Fund for distribution to school districts as specified; providing exceptions; providing for rulemaking by the Department of Revenue; providing an appropriation; providing for costs recovery; requiring the Department of Revenue to report collection information to the Department of Education; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (c) is added to subsection (1) of section 212.12, Florida Statutes, to read:

212.12 Dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with

delinquents; brackets applicable to taxable transactions; records required.--

(1) Notwithstanding any other provision of law and for the purpose of compensating persons granting licenses for and the lessors of real and personal property taxed hereunder, for the purpose of compensating dealers in tangible personal property, for the purpose of compensating dealers providing communication services and taxable services, for the purpose of compensating owners of places where admissions are collected, and for the purpose of compensating remitters of any taxes or fees reported on the same documents utilized for the sales and use tax, as compensation for the keeping of prescribed records, filing timely tax returns, and the proper accounting and remitting of taxes by them, such seller, person, lessor, dealer, owner, and remitter (except dealers who make mail order sales) shall be allowed 2.5 percent of the amount of the tax due and accounted for and remitted to the department, in the form of a deduction in submitting his or her report and paying the amount due by him or her; the department shall allow such deduction of 2.5 percent of the amount of the tax to the person paying the same for remitting the tax and making of tax returns in the manner herein provided, for paying the amount due to be paid by him or her, and as further compensation to dealers in tangible personal property for the keeping of prescribed records and for collection of taxes and remitting the same. However, if the amount of the tax due and remitted to the department for the reporting period exceeds $1,200, no allowance shall be allowed for all amounts in excess of $1,200. The executive director of

the department is authorized to negotiate a collection allowance, pursuant to rules promulgated by the department, with a dealer who makes mail order sales. The rules of the department shall provide guidelines for establishing the collection allowance based upon the dealer's estimated costs of collecting the tax, the volume and value of the dealer's mail order sales to purchasers in this state, and the administrative and legal costs and likelihood of achieving collection of the tax absent the cooperation of the dealer. However, in no event shall the collection allowance negotiated by the executive director exceed 10 percent of the tax remitted for a reporting period.

(c)1. A dealer entitled to the collection allowance provided in this section may elect to forego the collection allowance and direct the department to transfer the amount of the collection allowance into the Educational Enhancement Trust Fund. Such an election must be made with the timely filing of a return and may not be rescinded once made. If a dealer who makes such an election files a delinquent return, underpays the tax, or files an incomplete return, the amount transferred into the Educational Enhancement Trust Fund shall be the amount of the collection allowance remaining after resolution of liability for all of the tax, interest, and penalty due on that return or underpayment of tax. The Department of Education shall distribute the remaining amount from the trust fund to the school districts that have adopted a resolution stating that those funds will be used to ensure that up-to-date technology is purchased for the classrooms in the district and that teachers are trained in the use of that technology. Revenues collected in

districts that do not adopt such a resolution shall be equally distributed to districts that have adopted such resolutions.

2. This paragraph applies to all taxes, surtaxes, and any local option taxes administered under this chapter and remitted directly to the department. This paragraph does not apply to any locally imposed and self-administered convention development tax, tourist development tax, or tourist impact tax administered under this chapter.

Section 2. Notwithstanding the provisions of chapter 120, Florida Statutes, the Department of Revenue may adopt rules to carry out the amendment made by this act to s. 212.12, Florida Statutes.

Section 3. The sum of $112,920 is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering the amendment to s. 212.12, Florida Statutes, made by this act. The Department of Revenue shall retain all of the revenues from dealer collection allowances which are deposited into the Educational Enhancement Trust Fund until the $112,920 appropriated from the General Revenue Fund has been recovered.

Section 4. Revenues from the dealer collection allowances shall be transferred quarterly from the General Revenue Fund to the Educational Enhancement Trust Fund. The Department of Revenue shall provide to the Department of Education quarterly information about such revenues by county to which the collection allowance was attributed.

Section 5. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1251 CS Firefighter and Municipal Police Pensions
SPONSOR(S): Davis and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2028

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Mitchell	Williamson
2) Local Government Council	8 Y, 0 N	DiVagno	Hamby
3) Fiscal Council		Dobbs	Kelly
4) State Administration Council			
5)			

SUMMARY ANALYSIS

This bill amends the Marvin B. Clayton Firefighters Pension Trust Fund Act and the Marvin B. Clayton Police Officers Pension Trust Fund Act:

- Allows the terms of office for members of the boards of trustees to be increased, from two years to four years, by municipal ordinance, special act of the Legislature, or resolution;
- Adds specific fiduciary standards for executing the general powers and duties of the board of trustees;
- Increases the percentage of plan assets that the boards of trustees may invest in foreign securities to the same level as the State Board of Administration; and
- Permits boards of trustees to designate two individuals, other than the chair and the secretary, to sign drafts on accounts and subjects these individuals to the same fiduciary standards as required for the board of trustees.

The bill also expands the definition of firefighter to include supervisory and command personnel in the Marvin B. Clayton Firefighters Pension Trust Fund Act.

This bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2006, unless otherwise expressly provided for in the act.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill permits increased terms of office, increases authorized investments in foreign securities, and authorizes additional signatories for the boards of trustees of the pension trust funds.

B. EFFECT OF PROPOSED CHANGES:

Background on Municipal and Special District Firefighter Pensions

Firefighters working for municipalities or special districts that have a constituted fire department or an authorized volunteer fire department,[1] which owns and uses equipment for fighting fires that was in compliance with National Fire Protection Association Standards for Automotive Fire Apparatus at the time of purchase,[2] have pension plans pursuant to chapter 175, Florida Statutes. Chapter 175, Florida Statutes, is the Marvin B. Clayton Firefighters Pension Trust Fund Act ("Firefighters PTFA").[3] The Firefighters PTFA sets forth the minimum benefits and minimum standards for municipal and special district firefighter pension plans. There currently are 20 special fire control districts and 159 municipalities that have established plans pursuant to the Firefighters PTFA.[4] These plans had revenues of approximately $66,319,992 in 2004; $5,096,380 of those revenues were generated by special fire control districts.[5]

Background on Municipal Police Officer Pensions

Police officers[6] working for municipalities with a regularly organized police department, which uses equipment in serviceable condition with a value exceeding $500 for the prevention of crime and for the preservation of life and property, have pension plans pursuant to chapter 185, Florida Statutes. Chapter 185, Florida Statutes is the Marvin B. Clayton Police Officers Pension Trust Fund Act ("Police Officer PTFA"). The Police Officer PTFA sets forth the minimum benefits and minimum standards for municipal police officer pension plans.

Similarities between the Acts

The Firefighter PTFA and the Police Officer PTFA have a number of provisions which mirror each other. For example, both the Firefighter PTFA and the Police Officer PTFA provide the following sources of funding for pension trust funds:

- Payment from the "premium tax" - the net proceeds of the excise tax upon insurance companies, insurance associations, or other property insurers on their gross receipts on premiums from holders of certain policies within the legal boundaries of the municipality or special district;
- Payment of a designated percentage deducted from the salary of each firefighter or police officer;
- Payment of all fines and forfeitures imposed and collected from the violation of any rule and regulation promulgated by the board of trustees;

[1] Fla. Stat. § 175.041(1) (2005).
[2] Fla. Stat. § 175.041(2) (2005).
[3] Fla. Stat. § 175.025 (2005).
[4] Dep't of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep't).
[5] *Id.*
[6] Fla. Stat. § 185.02(11) (2005).

- Mandatory payment of the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of chapter 112, Florida Statutes;

- All gifts, bequests, and devises when donated;

- All increases in the fund by way of interest or dividends on bank deposits; and

- All other sources or income authorized by law for the augmentation of such pension trust funds.[7]

The Firefighter PTFA and the Police Officer PTFA also provide for governance by a board of trustees consisting of five members: two members who are legal residents of the special district or municipality and are appointed by its legislative body; two members who are full-time firefighters or police officers elected by a majority of the active firefighters or police officers who are members of such plan; any fifth member who must be chosen by a majority of the other four members.[8] This board of trustees must meet quarterly.[9]

Among the powers of these board of trustees: invest and reinvest the assets of the firefighter pension fund in certain authorized investments, issue drafts, keep required records, retain a qualified independent consultant every three years, and employ legal counsel, independent actuaries, and other advisors.[10]

Both the Firefighter PTFA and the Police Officer PTFA provide requirements for the retirement,[11] disability,[12] death,[13] and presumed injuries[14] of firefighters and police officers under the plan.

The Division of Retirement is responsible for the daily oversight and monitoring of any firefighter or police officer pension plan under the Firefighter PTFA and the Police Officer PTFA.[15] Actuarial deficits are not, however, obligations of the State of Florida.[16]

Changes to Board of Trustee Terms

Currently each member of the board of trustee serves two years and may succeed themselves. This bill provides the option to change the period of the terms to four years by a municipal ordinance, special act of the Legislature, or resolution adopted by the governing body of the special fire control district.

Express Fiduciary Responsibilities

As this is not explicitly stated within these chapters, this bill provides that boards of trustees under the Firefighter PTFA and the Police Officer PTFA are expressly subject to certain fiduciary standards[17] in the exercise of their general powers and duties.

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[7] Fla. Stat. §§ 175.091 and 185.07 (2005).
[8] Fla. Stat. § 175.061(1) (2005) (The membership of the board of trustees for a chapter plan shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the municipality or special fire control district, who shall be appointed by the governing body of the municipality or special fire control district, and two of whom shall be full-time firefighters as defined in s. 175.032 who shall be elected by a majority of the active firefighters who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members as provided for herein, and such person's name shall be submitted to the governing body of the municipality or special fire control district.). Fla. Stat. § 185.05 (2005).
[9] Fla. Stat. §§ 175.061(3) and 185.05(3) (2005).
[10] Fla. Stat. §§ 175.071 and 185.06 (2005).
[11] Fla. Stat. §§ 175.162 and 185.16 (2005).
[12] Fla. Stat. §§ 175.191 and 185.18 (2005).
[13] Fla. Stat. §§ 175.201 and 185.21 (2005).
[14] Fla. Stat. § 175.231 (2005) (Conditions or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty after passing a physical examination and subject to rebuttal); Fla. Stat. § 185.34 (2005).
[15] Fla. Stat. §§ 175.341 and 185.23 (2005).
[16] Fla. Stat. §§ 175.051 and 185.04 (2005).

Changes to the Authorized Investments

The Firefighter PTFA and the Police Officer PTFA each provide five authorized investments and reinvestments:[18]

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building, and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.[19]

5. Foreign securities not to exceed 10 percent of plan assets.

Boards of trustees may request a variance from these authorized investments through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district. In addition, where a special act, or a municipal ordinance, adopted prior to July 1, 1998, permits greater than a 50-percent equity investment, these municipalities are not required to comply with the aggregate equity investment provisions.

This bill increases the percentage of plan assets that the boards of trustees may invest in foreign securities to the same level as the State Board of Administration.[20]

Changes to Draft Authority

Currently, in order to issue drafts upon the pension trust funds, the drafts must be consecutively numbered, signed by the chair and secretary, and state the purpose for the drafts. This bill will allow two individuals who are subject to the same fiduciary standards as required for the boards of trustees and who are designated by the board to sign drafts.

Changes Affecting Only the Firefighter PTFA

Section 175.032, Florida Statutes, provides the definitions for the Firefighters PTFA, including a definition for "firefighter." This bill expands the definition of firefighter to include all certified supervisory and command personnel whose duties include the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters, but does not include

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[17] Fla. Stat. §§112.656 (fiduciaries and retirement systems), 112.611 (requiring compliance with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974), 112.311 to 112.3187 (Code of Ethics), and 518.11 (prudent investor rule) (2005).
[18] Fla. Stat. §§ 175.071 and 185.06 (2005).
[19] *Id.* (The corporation must be listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service. These investments may not exceed more than five percent of the assets of the board of trustees in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.).
[20] Fla. Stat. § 215.47(5) (2005) (currently sets this level at 20 percent); *but see* HB 7155 (2005) (which increases this percentage to 25 percent). The bill has a contingent effective date to permit the percentage to be set at 25 percent should HB 7155 become law. HB 1251 CS (2005), § 9.

part-time firefighters or auxiliary firefighters. This is similar to a provision in the Police Officers PTFA in section 185.02(11), Florida Statutes.

C. SECTION DIRECTORY:

Section 1: Amends section 175.032, Florida Statutes, to expand the definition of firefighter.

Section 2: Amends section 175.061, Florida Statutes, to provide the option to change the terms of office for the boards of trustees.

Section 3: Amends section 175.071, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 25 percent, and drafting authority.

Section 4: Amends section 175.071, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 20 percent, and drafting authority.

Section 5: Amends section 185.05, Florida Statutes, to provide the option to change the terms of office for the boards of trustees.

Section 6: Amends section 185.06, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 25 percent, and drafting authority.

Section 7: Amends section 185.06, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 20 percent, and drafting authority.

Section 8: Sets forth a severability clause.

Section 9: Provides an effective date of July 1, 2006 for sections 1, 2, 5, and 8; provides a contingent effective date of July 1, 2006, for either sections 3 and 6 or 4 and 7.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The expanded investment authority of the municipal and special district pension boards may have a positive, direct impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with municipalities or counties. This bill does not appear to reduce the authority that municipalities or counties have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Two Designated Signatories for Drafts

The Division of Retirement within the Department of Management Services, which is responsible for the daily oversight and monitoring for actuarial soundness, made the following comments on the provision allowing the board to designate two individuals to sign disbursements from the trust fund:

> The proposal appears to erode the responsibility and direction of the board of trustees. No criteria are established for the selection of these two individuals and no fiduciary designation is required. While it is not clear why this amendment is needed, if it is maintained in the proposal, it is suggested that additional language be added to require the designated individuals to be considered 'fiduciaries' to the plan.[21]

While the committee substitute does subject these two designated individuals to the same fiduciary standard as required for the board of trustees, the other comments still appear to raise valid issues which the sponsor of the bill may wish to address.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Governmental Operations Committee adopted a "strike-everything" amendment and reported the bill favorably with committee substitute:

- Increases, from two years to four years, the terms of office for members of the boards of trustees if provided by municipal ordinance, special act of the Legislature, or resolution of the special fire control district;

[21] Florida Department of Management Services, HB 1251 (2006) Substantive Bill Analysis (March 24, 2006) (on file with department).

- Expands the specific fiduciary standards for executing the general powers and duties of the board of trustees;

- Removes the provisions that would have mirrored the investment authority of the State Board of Administration and instead only increases from 10 percent to 20 or 25 percent, depending on other legislation being considered by the Legislature, the amount of plan assets which boards of trustees may invest in foreign securities;

- Continues to allow boards of trustees to designate two individuals, other than the chair and the secretary, to sign drafts on accounts, but subjects them to the same fiduciary standards as the boards of trustees; and

- Removes provisions that would have allowed boards of trustees to establish a maximum entrance age.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to firefighter and municipal police pensions; amending s. 175.032, F.S.; revising the definition of "firefighter"; amending s. 175.061, F.S.; providing for the terms of service for the board of trustees of the firefighters' pension trust fund to be revised under certain circumstances; amending s. 175.071, F.S.; requiring the board of trustees to perform its powers subject to certain fiduciary standards and ethics provisions; revising the percentage of assets of the firefighters' pension trust fund that the board of trustees may invest in foreign securities; authorizing two individuals subject to certain fiduciary standards and designated by the board to sign drafts issued upon the firefighters' pension trust fund; amending s. 185.05, F.S.; providing for the terms of service for the board of trustees of the municipal police officers' retirement trust fund to be revised under certain circumstances; amending s. 185.06, F.S.; requiring the board of trustees

to perform its powers subject to certain fiduciary standards and ethics provisions; revising the percentage of assets of the municipal police officers' retirement trust fund that the board of trustees may invest in foreign securities; authorizing two individuals subject to certain fiduciary standards and designated by the board to sign drafts issued upon the municipal police officers' retirement trust fund; providing for severability; providing contingent effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (8) of section 175.032, Florida Statutes, is amended to read:

175.032 Definitions.--For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the following words and phrases have the following meanings:

(8)(a) "Firefighter" means any person employed solely by a constituted fire department of any municipality or special fire control district who is certified as a firefighter as a condition of employment in accordance with the provisions of s. 633.35 and whose duty it is to extinguish fires, to protect life, or to protect property. <u>"Firefighter" includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time</u>

firefighters, part-time firefighters, or auxiliary firefighters, but does not include part-time firefighters or auxiliary firefighters. However, for purposes of this chapter only, "firefighter" also includes public safety officers who are responsible for performing both police and fire services, who are certified as police officers or firefighters, and who are certified by their employers to the Chief Financial Officer as participating in this chapter prior to October 1, 1979. Effective October 1, 1979, public safety officers who have not been certified as participating in this chapter shall be considered police officers for retirement purposes and shall be eligible to participate in chapter 185. Any plan may provide that the fire chief shall have an option to participate, or not, in that plan.

Section 2. Paragraph (a) of subsection (1) of section 175.061, Florida Statutes, is amended to read:

175.061 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.--For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) In each municipality and in each special fire control district there is hereby created a board of trustees of the firefighters' pension trust fund, which shall be solely responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(a) The membership of the board of trustees for a chapter plan shall consist of five members, two of whom, unless

otherwise prohibited by law, shall be legal residents of the municipality or special fire control district, who shall be appointed by the governing body of the municipality or special fire control district, and two of whom shall be full-time firefighters as defined in s. 175.032 who shall be elected by a majority of the active firefighters who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members as provided for herein, and such person's name shall be submitted to the governing body of the municipality or special fire control district. Upon receipt of the fifth person's name, the governing body of the municipality or special fire control district shall, as a ministerial duty, appoint such person to the board of trustees as its fifth member. The fifth member shall have the same rights as each of the other four members appointed or elected as herein provided, shall serve as trustee for a period of 2 years, and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of 2 years, unless sooner replaced by the governing body at whose pleasure he or she shall serve, and may succeed himself or herself as a trustee. Each firefighter member shall serve as trustee for a period of 2 years, unless he or she sooner leaves the employment of the municipality or special fire control district as a firefighter, whereupon a successor shall be chosen in the same manner as an original appointment. Each firefighter may succeed himself or herself in office. Effective July 1,

2006, the terms of office of the appointed and elected members of the board may be amended by municipal ordinance, special act of the Legislature, or resolution adopted by the governing body of the special fire control district, to extend the terms of office from 2 years to 4 years. The length of the terms of office shall be the same for all board members.

Section 3. Effective July 1, 2006, if House Bill 7155 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law, subsection (1) of section 175.071, Florida Statutes, is amended to read:

175.071 General powers and duties of board of trustees.--For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187, may:

(a) Invest and reinvest the assets of the firefighters' pension trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the firefighters' pension trust fund shall be entitled under the provisions of this chapter and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the firefighters' pension trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building,

and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees shall not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.

This paragraph shall apply to all boards of trustees and participants. However, in the event that a municipality or

special fire control district has a duly enacted pension plan pursuant to, and in compliance with, s. 175.351, and the trustees thereof desire to vary the investment procedures herein, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district; where a special act, or a municipality by ordinance adopted prior to July 1, 1998, permits a greater than 50-percent equity investment, such municipality shall not be required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law to the contrary, nothing in this section may be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. The board of trustees may invest up to 25 ~~10~~ percent of plan assets in foreign securities.

(c) Issue drafts upon the firefighters' pension trust fund pursuant to this act and rules and regulations prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or two individuals designated by the board who are subject to the same fiduciary standards as required for the board of trustees under this subsection, and state upon their faces the purpose for which the drafts are drawn. The treasurer or depository of each municipality or special fire control district shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall be otherwise drawn from the fund.

(d) Convert into cash any securities of the fund.

(e) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

Section 4. Effective July 1, 2006, if House Bill 7155 or similar legislation is not adopted in the same legislative session or an extension thereof, subsection (1) of section 175.071, Florida Statutes, is amended to read:

175.071 General powers and duties of board of trustees.--For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187, may:

(a) Invest and reinvest the assets of the firefighters' pension trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the firefighters' pension trust fund shall be entitled under the provisions of this chapter and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the firefighters' pension trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building, and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit

union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees shall not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.

This paragraph shall apply to all boards of trustees and participants. However, in the event that a municipality or special fire control district has a duly enacted pension plan pursuant to, and in compliance with, s. 175.351, and the trustees thereof desire to vary the investment procedures

herein, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district; where a special act, or a municipality by ordinance adopted prior to July 1, 1998, permits a greater than 50-percent equity investment, such municipality shall not be required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law to the contrary, nothing in this section may be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. The board of trustees may invest up to 20 ~~10~~ percent of plan assets in foreign securities.

(c) Issue drafts upon the firefighters' pension trust fund pursuant to this act and rules and regulations prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or two individuals designated by the board who are subject to the same fiduciary standards as required for the board of trustees under this subsection, and state upon their faces the purpose for which the drafts are drawn. The treasurer or depository of each municipality or special fire control district shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall be otherwise drawn from the fund.

(d) Convert into cash any securities of the fund.

(e) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

Section 5. Paragraph (a) of subsection (1) of section 185.05, Florida Statutes, is amended to read:

185.05 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.--For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) In each municipality described in s. 185.03 there is hereby created a board of trustees of the municipal police officers' retirement trust fund, which shall be solely responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(a) The membership of the board of trustees for chapter plans shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the municipality, who shall be appointed by the legislative body of the municipality, and two of whom shall be police officers as defined in s. 185.02 who shall be elected by a majority of the active police officers who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired police officers to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members, and such person's name shall be submitted to the legislative body of the municipality. Upon receipt of the fifth person's name, the legislative body of the municipality shall, as a ministerial duty, appoint such person to the board of trustees as its fifth member. The fifth member shall have the same rights as each of the other four members appointed or

elected as herein provided, shall serve as trustee for a period of 2 years, and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of 2 years, unless sooner replaced by the legislative body at whose pleasure the member shall serve, and may succeed himself or herself as a trustee. Each police officer member shall serve as trustee for a period of 2 years, unless he or she sooner leaves the employment of the municipality as a police officer, whereupon the legislative body of the municipality shall choose a successor in the same manner as an original appointment. Each police officer may succeed himself or herself in office. Effective July 1, 2006, the terms of office of the appointed and elected members of the board may be amended by municipal ordinance or special act of the Legislature to extend the terms of office from 2 years to 4 years. The length of the terms of office shall be the same for all board members.

Section 6. Effective July 1, 2006, if House Bill 7155 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law, subsection (1) of section 185.06, Florida Statutes, is amended to read:

185.06 General powers and duties of board of trustees.--For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187, may:

(a) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance

companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund shall be entitled under the provisions of this chapter, and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the retirement trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees shall not invest more than 5 percent of its assets in the common stock or capital stock of

any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of the company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the fund's assets.

This paragraph shall apply to all boards of trustees and participants. However, in the event that a municipality has a duly enacted pension plan pursuant to, and in compliance with, s. 185.35 and the trustees thereof desire to vary the investment procedures herein, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the Legislature; where a special act, or a municipality by ordinance adopted prior to July 1, 1998, permits a greater than 50-percent equity investment, such municipality shall not be required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law to the contrary, nothing in this section may be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. The board of trustees may invest up to 25 ~~10~~ percent of plan assets in foreign securities.

(c) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this act and rules and regulations prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or two individuals designated by the board who are

subject to the same fiduciary standards as required for the board of trustees under this subsection, and state upon their faces the purposes for which the drafts are drawn. The city treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall otherwise be drawn from the fund.

(d) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(e) Convert into cash any securities of the fund.

(f) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

Section 7. Effective July 1, 2006, if House Bill 7155 or similar legislation is not adopted in the same legislative session or an extension thereof, subsection (1) of section 185.06, Florida Statutes, is amended to read:

185.06 General powers and duties of board of trustees.--For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187, may:

(a) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund shall be entitled under

the provisions of this chapter, and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the retirement trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, provided:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees shall not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of the company or the aggregate of its investments

under this subparagraph at cost exceed 50 percent of the fund's assets.

This paragraph shall apply to all boards of trustees and participants. However, in the event that a municipality has a duly enacted pension plan pursuant to, and in compliance with, s. 185.35 and the trustees thereof desire to vary the investment procedures herein, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the Legislature; where a special act, or a municipality by ordinance adopted prior to July 1, 1998, permits a greater than 50-percent equity investment, such municipality shall not be required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law to the contrary, nothing in this section may be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. The board of trustees may invest up to 20 ~~10~~ percent of plan assets in foreign securities.

(c) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this act and rules and regulations prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or two individuals designated by the board who are subject to the same fiduciary standards as required for the board of trustees under this subsection, and state upon their faces the purposes for which the drafts are drawn. The city

treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money shall otherwise be drawn from the fund.

(d) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(e) Convert into cash any securities of the fund.

(f) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

Section 8. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 9. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1269 CS Local Occupational License Taxes
SPONSOR(S): Cusack
TIED BILLS: **IDEN./SIM. BILLS:** SB 2218

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	8 Y, 0 N, w/CS	Rice	Diez-Arguelles
2) Local Government Council	7 Y, 0 N, w/CS	Camechis	Hamby
3) Fiscal Council		Rice ACR	Kelly cle
4)			
5)			

SUMMARY ANALYSIS

Under current law, a county or municipality may, by resolution or ordinance, impose an occupational license tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.

This bill changes the name of the "Local Occupational License Tax Act" to the "Local Business Tax Act" and conforms the name change throughout ch. 205, F.S. In addition, the bill amends ch. 205, F.S., to provide that persons who pay occupational business taxes receive a "receipt" for payment rather than a "certificate".

The bill does not authorize any new taxes or fees, or increase existing taxes or fees and therefore does not have a fiscal impact on the state.

This bill takes effect January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the house principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 205, F.S., is the Local Occupational License Act. In 1972 the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments have since been authorized to levy occupational license taxes according to the provisions of the Local Occupational License Act.

Under current law, a county or municipality may, by resolution or ordinance, impose an occupational license tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.

Licenses are sold by the tax collector beginning on August 1 of each year, are due and payable on or before September 30 of each year, and expire on September 30 of the succeeding year.

The amount of the tax and the occupations and businesses the tax is imposed on are determined at the discretion of the local government within the limitations of ch. 205, F.S.

Licensure Requirements

Section 205.194, F.S., prohibits local governments from issuing occupational licenses for professions regulated by the Department of Business and Professional Regulation (DBPR) without verifying that the person has satisfied DBPR requirements. Applicants are required to submit proof of registration, certification, or licensure issued by DBPR upon initial licensure in the jurisdiction. By August 1 of each year, DBPR is required to supply local officials with a list of the professions it regulates and persons that should not be allowed to renew their occupational license due to suspension, revocation, or inactivation of licensure, certification, or registration. DBPR currently regulates the following:

- certified public accountants and accounting businesses,
- alarm system contractors,
- asbestos consultants and contractors,
- athlete agents,
- auctioneers and their businesses,
- barbers and barber shops,
- building code administrators and inspectors,
- constructing contractors and constructing contracting businesses,
- community association managers,
- cosmetologists and cosmetology salons,
- electrical contractors,
- employee leasing,
- farm labor,
- geologists and geologist businesses,
- landscape architects and landscape architect businesses,
- pilots (harbor),
- surveyors and mappers and surveyor and mapper businesses,

- talent agencies, and
- veterinarians and veterinary establishments.

Section 205.023, F.S., prohibits the issuance of an occupational license to an applicant that does not provide proof of any applicable fictitious name registrations with the Division of Corporations in the Department of State.

Sections 205.1965, 205.1969, 205.1971, and 205.1973, F.S., require additional verification from pest control businesses, health studios and ballroom dance studios, businesses engaged in the selling of travel, and telemarketing businesses. These businesses must provide verification of licensure, registration, or exemption by the Department of Agriculture and Consumer Services before a local government may issue a local occupational license.

Section 205.196, F.S., requires pharmacies to produce a current permit from the Board of Pharmacy before a local government may issue a local occupational license.

Section 205.1965, F.S., requires that assisted living facilities must provide verification of licensure from the Agency for Health Care Administration before a local government may issue a local occupational license.

Other

Currently 368 of the 404 municipalities and 52 of the 67 counties in Florida have some sort of local occupational license tax in place.[1]

Although the local occupational license tax is meant to be purely revenue producing in nature, it has unintentionally become a measure of profession and business qualification to engage in a specified activity. This bill intends to rename the act to reflect that the business or individual has merely paid a tax and it alone does not authenticate the qualifications of a business or individual.

Proposed Changes

This bill changes the name of the Act from the "Local Occupational License Tax Act" to the "Local Business Tax Act", and conforms the name change throughout.

The bill also defines "receipt" to mean the document that is issued by the local governing authority which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of the Local Business Tax Act.

The bill amends ch. 205, F.S., to provide that persons who pay occupational business taxes receive a "receipt" for payment rather than a "certificate".

C. SECTION DIRECTORY:

Section 1: Amends s. 205.013, F.S., to reflect that the "Local Occupational License Tax Act" is renamed as the "Local Business Tax Act".
Section 2: Amends s. 205.022, F.S., to revise and add definitions; and conform name changes.
Section 3: Amends s. 205.023, F.S., to conform name changes.
Section 4: Amends s. 205.0315, F.S., to conform name changes.
Section 5: Amends s. 205.032, F.S., to conform name changes.
Section 6: Amends s. 205.033, F.S., to conform name changes.
Section 7: Amends s. 205.042, F.S., to conform name changes.
Section 8: Amends s. 205.043, F.S., to conform name changes.
Section 9: Amends s. 205.045, F.S., to conform name changes.

[1] Data provided by the Legislative Committee on Intergovernmental Relations

Section 10: Amends s. 205.053, F.S., to conform name changes.
Section 11: Amends s. 205.0532, F.S., to conform name changes.
Section 12: Amends s. 205.0535, F.S., to conform name changes.
Section 13: Amends s. 205.0536, F.S., to conform name changes.
Section 14: Amends s. 205.0537, F.S., to conform name changes.
Section 15: Amends s. 205.054, F.S., to conform name changes.
Section 16: Amends s. 205.063, F.S., to conform name changes.
Section 17: Amends s. 205.064, F.S., to conform name changes.
Section 18: Amends s. 205.065, F.S., to conform name changes.
Section 19: Amends s. 205.162, F.S., to conform name changes.
Section 20: Amends s. 205.171, F.S., to conform name changes.
Section 21: Amends s. 205.191, F.S., to conform name changes.
Section 22: Amends s. 205.192, F.S., to conform name changes.
Section 23: Amends s. 205.193, F.S., to conform name changes.
Section 24: Amends s. 205.194, F.S., to conform name changes.
Section 25: Amends s. 205.196, F.S., to conform name changes.
Section 26: Amends s. 205.1965, F.S., to conform name changes.
Section 27: Amends s. 205.1967, F.S., to conform name changes.
Section 28: Amends s. 205.1969, F.S., to conform name changes.
Section 29: Amends s. 205.1971, F.S., to conform name changes.
Section 30: Amends s. 205.1973, F.S., to conform name changes.
Section 31: Provides that the bill takes effect January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Finance and Tax Committee adopted three amendments on March 31, 2006. The first amendment introduced whereas clauses into the bill to clarify that the intent of this bill is to simply change the name of the act and not to introduce any new taxes or fees. The second amendment changed the definition of certificate to ensure that the certificates issued will bear the words "Local Business Tax Certificate". The third amendment changed the effective date of the bill from July 1, 2006 to January 1, 2007.

On April 11, 2006, the Local Government Council adopted a strike-all amendment to change references to business tax "certificate" to business tax "receipt" in order to clarify that a person who pays occupational business taxes receives only a receipt for payment, not a certificate.

CHAMBER ACTION

The Local Government Council recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to local occupational license taxes; amending ch. 205, F.S., consisting of ss. 205.013-205.1973, F.S.; changing the term "local occupational license tax" to "local business tax"; defining the term "receipt" as it relates to business taxes; amending provisions to conform; providing an effective date.

WHEREAS, local governments impose an occupational license tax for the privilege of engaging in a business or profession, and

WHEREAS, what a particular charge is named by government is not dispositive of its correct characterization, and

WHEREAS, local governments have a bona fide interest in protecting their residents from consumer fraud, and

WHEREAS, some unscrupulous persons present a local occupational license to consumers as proof of competency to perform various repairs and services, and

WHEREAS, local consumers are victimized by these representations, and

WHEREAS, changing the name of the item issued by local governments from occupational license tax to local business tax may eliminate some fraudulent misrepresentations, and

WHEREAS, the Legislature seeks to change the name of the "Local Occupational License Tax Act" to the "Local Business Tax Act" and make related changes, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 205.013, Florida Statutes, is amended to read:

205.013 Short title.--This chapter shall be known and may be cited as the "Local Business ~~Occupational License~~ Tax Act."

Section 2. Section 205.022, Florida Statutes, is amended to read:

205.022 Definitions.--When used in this chapter, the following terms and phrases shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

(1) ~~(6)~~ "Business," "profession," and "occupation" do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in this state, which institutions are more particularly defined and limited as follows:

(a) "Religious institutions" means churches and ecclesiastical or denominational organizations or established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on, and also means church cemeteries.

(b) "Educational institutions" means state tax-supported or parochial, church and nonprofit private schools, colleges, or universities conducting regular classes and courses of study required for accreditation by or membership in the Southern Association of Colleges and Schools, the Department of Education, or the Florida Council of Independent Schools. Nonprofit libraries, art galleries, and museums open to the public are defined as educational institutions and eligible for exemption.

(c) "Charitable institutions" means only nonprofit corporations operating physical facilities in this state at which are provided charitable services, a reasonable percentage of which are without cost to those unable to pay.

(2) "Receipt" means the document that is issued by the local governing authority which bears the words "Local Business Tax Receipt" and evidences that the person in whose name the document is issued has complied with the provisions of this chapter relating to the business tax.

(3) ~~(5)~~ "Classification" means the method by which a business or group of businesses is identified by size or type, or both.

(4) ~~(7)~~ "Enterprise zone" means an area designated as an enterprise zone pursuant to s. 290.0065. This subsection expires

on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(5) ~~(1)~~ "Local business tax ~~occupational license~~" means the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection. Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax ~~occupational license~~ imposed under the provisions of this chapter.

(6) ~~(2)~~ "Local governing authority" means the governing body of any county or incorporated municipality of this state.

(7) ~~(3)~~ "Person" means any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular.

(8) ~~(4)~~ "Taxpayer" means any person liable for taxes imposed under the provisions of this chapter; any agent required to file and pay any taxes imposed hereunder; and the heirs, successors, assignees, and transferees of any such person or agent.

Section 3. Section 205.023, Florida Statutes, is amended to read:

205.023 Requirement to report status of fictitious name registration.--As a prerequisite to receiving a local business

tax receipt ~~occupational license~~ under this chapter or transferring a business license under s. 205.033(2) or s. 205.043(2), the applicant or new owner must present to the county or municipality that has jurisdiction to issue or transfer the receipt ~~license~~ either:

(1) A copy of the applicant's or new owner's current fictitious name registration, issued by the Division of Corporations of the Department of State; or

(2) A written statement, signed by the applicant or new owner, which sets forth the reason that the applicant or new owner need not comply with the Fictitious Name Act.

Section 4. Section 205.0315, Florida Statutes, is amended to read:

205.0315 Ordinance adoption after October 1, 1995.--Beginning October 1, 1995, a county or municipality that has not adopted a business ~~an occupational license~~ tax ordinance or resolution may adopt a business ~~an occupational license~~ tax ordinance. The business ~~occupational license~~ tax rate structure and classifications in the adopted ordinance must be reasonable and based upon the rate structure and classifications prescribed in ordinances adopted by adjacent local governments that have implemented s. 205.0535. If no adjacent local government has implemented s. 205.0535, or if the governing body of the county or municipality finds that the rate structures or classifications of adjacent local governments are unreasonable, the rate structure or classifications prescribed in its ordinance may be based upon those prescribed in ordinances

adopted by local governments that have implemented s. 205.0535 in counties or municipalities that have a comparable population.

Section 5. Section 205.032, Florida Statutes, is amended to read:

205.032 Levy; counties.--The governing body of a county may levy, by appropriate resolution or ordinance, a business ~~an occupational license~~ tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. However, the governing body must first give at least 14 days' public notice between the first and last reading of the resolution or ordinance by publishing a notice in a newspaper of general circulation within its jurisdiction as defined by law. The public notice must contain the proposed classifications and rates applicable to the business ~~occupational license~~ tax.

Section 6. Section 205.033, Florida Statutes, is amended to read:

205.033 Conditions for levy; counties.--

(1) The following conditions are imposed on the authority of a county governing body to levy a business ~~an occupational license~~ tax:

(a) The tax must be based upon reasonable classifications and must be uniform throughout any class.

(b) Unless the county implements s. 205.0535 or adopts a new business ~~occupational license~~ tax ordinance under s. 205.0315, a business ~~an occupational license~~ tax levied under this subsection may not exceed the rate provided by this chapter in effect for the year beginning October 1, 1971; however,

beginning October 1, 1980, the county governing body may increase business ~~occupational license~~ taxes authorized by this chapter. The amount of the increase above the ~~license~~ tax rate levied on October 1, 1971, for ~~license~~ taxes levied at a flat rate may be up to 100 percent for business ~~occupational license~~ taxes that are $100 or less; 50 percent for business ~~occupational license~~ taxes that are between $101 and $300; and 25 percent for business ~~occupational license~~ taxes that are more than $300. Beginning October 1, 1982, the increase may not exceed 25 percent for ~~license~~ taxes levied at graduated or per unit rates. Authority to increase business ~~occupational license~~ taxes does not apply to licenses or receipts granted to any utility franchised by the county for which a franchise fee is paid.

(c) A receipt ~~license~~ is not valid for more than 1 year, and all receipts ~~licenses~~ expire on September 30 of each year, except as otherwise provided by law.

(2) Any receipt ~~business license~~ may be transferred to a new owner, when there is a bona fide sale of the business, upon payment of a transfer fee of up to 10 percent of the annual business ~~license~~ tax, but not less than $3 nor more than $25, and presentation of the original receipt ~~license~~ and evidence of the sale.

(3) Upon written request and presentation of the original receipt ~~license~~, any receipt ~~license~~ may be transferred from one location to another location in the same county upon payment of a transfer fee of up to 10 percent of the annual business ~~license~~ tax, but not less than $3 nor more than $25.

(4) The revenues derived from the business ~~occupational license~~ tax, exclusive of the costs of collection and any credit given for municipal business ~~license~~ taxes, shall be apportioned between the unincorporated area of the county and the incorporated municipalities located therein by a ratio derived by dividing their respective populations by the population of the county. This subsection does not apply to counties that have established a new rate structure under s. 205.0535.

(5) The revenues so apportioned shall be sent to the governing authority of each municipality, according to its ratio, and to the governing authority of the county, according to the ratio of the unincorporated area, within 15 days following the month of receipt. This subsection does not apply to counties that have established a new rate structure under s. 205.0535.

(6)(a) Each county, as defined in s. 125.011(1), or any county adjacent thereto may levy and collect, by an ordinance enacted by the governing body of the county, an additional business ~~occupational license~~ tax up to 50 percent of the appropriate business ~~license~~ tax imposed under subsection (1).

(b) Subsections (4) and (5) do not apply to any revenues derived from the additional tax imposed under this subsection. Proceeds from the additional business ~~license~~ tax must be placed in a separate interest-earning account, and the governing body of the county shall distribute this revenue, plus accrued interest, each fiscal year to an organization or agency designated by the governing body of the county to oversee and implement a comprehensive economic development strategy through

advertising, promotional activities, and other sales and marketing techniques.

(c) An ordinance that levies an additional business ~~occupational license~~ tax under this subsection may not be adopted after January 1, 1995.

(7) Notwithstanding any other provisions of this chapter, the revenue received from a county business ~~occupational license~~ tax may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.

Section 7. Section 205.042, Florida Statutes, is amended to read:

205.042 Levy; municipalities.--The governing body of an incorporated municipality may levy, by appropriate resolution or ordinance, a business ~~an occupational license~~ tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. However, the governing body must first give at least 14 days' public notice between the first and last reading of the resolution or ordinance by publishing the notice in a newspaper of general circulation within its jurisdiction as defined by law. The notice must contain the proposed classifications and rates applicable to the business ~~occupational license~~ tax. The business ~~occupational license~~ tax may be levied on:

(1) Any person who maintains a permanent business location or branch office within the municipality, for the privilege of engaging in or managing any business within its jurisdiction.

(2) Any person who maintains a permanent business location or branch office within the municipality, for the privilege of engaging in or managing any profession or occupation within its jurisdiction.

(3) Any person who does not qualify under subsection (1) or subsection (2) and who transacts any business or engages in any occupation or profession in interstate commerce, if the business ~~license~~ tax is not prohibited by s. 8, Art. I of the United States Constitution.

Section 8. Section 205.043, Florida Statutes, is amended to read:

205.043 Conditions for levy; municipalities.--

(1) The following conditions are imposed on the authority of a municipal governing body to levy a business ~~an occupational license~~ tax:

(a) The tax must be based upon reasonable classifications and must be uniform throughout any class.

(b) Unless the municipality implements s. 205.0535 or adopts a new business ~~occupational license~~ tax ordinance under s. 205.0315, a business ~~an occupational license~~ tax levied under this subsection may not exceed the rate in effect in the municipality for the year beginning October 1, 1971; however, beginning October 1, 1980, the municipal governing body may increase business ~~occupational license~~ taxes authorized by this chapter. The amount of the increase above the ~~license~~ tax rate levied on October 1, 1971, for ~~license~~ taxes levied at a flat rate may be up to 100 percent for business ~~occupational license~~ taxes that are $100 or less; 50 percent for business

~~occupational license~~ taxes that are between $101 and $300; and 25 percent for business ~~occupational license~~ taxes that are more than $300. Beginning October 1, 1982, an increase may not exceed 25 percent for ~~license~~ taxes levied at graduated or per unit rates. Authority to increase business ~~occupational license~~ taxes does not apply to receipts or licenses granted to any utility franchised by the municipality for which a franchise fee is paid.

(c) A receipts ~~license~~ is not valid for more than 1 year and all receipts ~~licenses~~ expire on September 30 of each year, except as otherwise provided by law.

(2) Any business receipt ~~license~~ may be transferred to a new owner, when there is a bona fide sale of the business, upon payment of a transfer fee of up to 10 percent of the annual ~~license~~ tax, but not less than $3 nor more than $25, and presentation of the original receipt ~~license~~ and evidence of the sale.

(3) Upon written request and presentation of the original receipt ~~license~~, any receipt ~~license~~ may be transferred from one location to another location in the same municipality upon payment of a transfer fee of up to 10 percent of the annual ~~license~~ tax, but not less than $3 nor more than $25.

(4) If the governing body of the county in which the municipality is located has levied a business ~~an occupational license~~ tax or subsequently levies such a tax, the collector of the county tax may issue the receipt ~~license~~ and collect the tax thereon.

Section 9. Section 205.045, Florida Statutes, is amended to read:

205.045 Transfer of administrative duties.--The governing body of a municipality that levies a business ~~an occupational license~~ tax may request that the county in which the municipality is located issue the municipal receipt ~~license~~ and collect the tax thereon. The governing body of a county that levies a business ~~an occupational license~~ tax may request that municipalities within the county issue the county receipt ~~license~~ and collect the tax thereon. Before any local government may issue receipts ~~occupational licenses~~ on behalf of another local government, appropriate agreements must be entered into by the affected local governments.

Section 10. Section 205.053, Florida Statutes, is amended to read:

205.053 Business tax receipts ~~Occupational licenses~~; dates due and delinquent; penalties.--

(1) All business tax receipts ~~licenses~~ shall be sold by the appropriate tax collector beginning August 1 of each year, are due and payable on or before September 30 of each year, and expire on September 30 of the succeeding year. If September 30 falls on a weekend or holiday, the tax is due and payable on or before the first working day following September 30. Provisions for partial receipts ~~licenses~~ may be made in the resolution or ordinance authorizing such receipts ~~licenses~~. Receipts ~~Licenses~~ that are not renewed when due and payable are delinquent and subject to a delinquency penalty of 10 percent for the month of October, plus an additional 5 percent penalty for each

subsequent month of delinquency until paid. However, the total delinquency penalty may not exceed 25 percent of the business ~~occupational license~~ tax for the delinquent establishment.

(2) Any person who engages in or manages any business, occupation, or profession without first obtaining a local business tax receipt ~~occupational license~~, if required, is subject to a penalty of 25 percent of the tax ~~license~~ due, in addition to any other penalty provided by law or ordinance.

(3) Any person who engages in any business, occupation, or profession covered by this chapter, who does not pay the required business ~~occupational license~~ tax within 150 days after the initial notice of tax due, and who does not obtain the required receipt ~~occupational license~~ is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to $250.

Section 11. Section 205.0532, Florida Statutes, is amended to read:

205.0532 Revocation or refusal to renew; doing business with Cuba.--Any local governing authority issuing a business tax receipt ~~an occupational license~~ to any individual, business, or entity under this chapter may revoke or refuse to renew such receipt ~~license~~ if the individual, business, or entity, or parent company of such individual, business, or entity, is doing business with Cuba.

Section 12. Section 205.0535, Florida Statutes, is amended to read:

205.0535 Reclassification and rate structure revisions.--

(1) By October 1, 1995, any municipality or county may, by ordinance, reclassify businesses, professions, and occupations and may establish new rate structures, if the conditions specified in subsections (2) and (3) are met. A person who is engaged in the business of providing local exchange telephone service or a pay telephone service in a municipality or in the unincorporated area of a county and who pays the business ~~occupational license~~ tax under the category designated for telephone companies or a pay telephone service provider certified pursuant to s. 364.3375 is deemed to have but one place of business or business location in each municipality or unincorporated area of a county. Pay telephone service providers may not be assessed a business ~~an occupational license~~ tax on a per-instrument basis.

(2) Before adopting a reclassification and revision ordinance, the municipality or county must establish an equity study commission and appoint its members. Each member of the study commission must be a representative of the business community within the local government's jurisdiction. Each equity study commission shall recommend to the appropriate local government a classification system and rate structure for business ~~local occupational license~~ taxes.

(3)(a) After the reclassification and rate structure revisions have been transmitted to and considered by the appropriate local governing body, it may adopt by majority vote a new business ~~occupational license~~ tax ordinance. Except that a minimum ~~license~~ tax of up to $25 is permitted, the reclassification may ~~shall~~ not increase the ~~occupational license~~

tax by more than the following: for receipts ~~licenses~~ costing $150 or less, 200 percent; for receipts ~~licenses~~ costing more than $150 but not more than $500, 100 percent; for receipts ~~licenses~~ costing more than $500 but not more than $2,500, 75 percent; for receipts ~~licenses~~ costing more than $2,500 but not more than $10,000, 50 percent; and for receipts ~~licenses~~ costing more than $10,000, 10 percent; however, in no case may the tax on any receipt ~~license~~ be increased more than $5,000.

(b) The total annual revenue generated by the new rate structure for the fiscal year following the fiscal year during which the rate structure is adopted may not exceed:

1. For municipalities, the sum of the revenue base and 10 percent of that revenue base. The revenue base is the sum of the business ~~occupational license~~ tax revenue generated by receipts ~~licenses~~ issued for the most recently completed local fiscal year or the amount of revenue that would have been generated from the authorized increases under s. 205.043(1)(b), whichever is greater, plus any revenue received from the county under s. 205.033(4).

2. For counties, the sum of the revenue base, 10 percent of that revenue base, and the amount of revenue distributed by the county to the municipalities under s. 205.033(4) during the most recently completed local fiscal year. The revenue base is the business ~~occupational license~~ tax revenue generated by receipts ~~licenses~~ issued for the most recently completed local fiscal year or the amount of revenue that would have been generated from the authorized increases under s. 205.033(1)(b),

whichever is greater, but may not include any revenues distributed to municipalities under s. 205.033(4).

(c) In addition to the revenue increases authorized by paragraph (b), revenue increases attributed to the increases in the number of receipts ~~licenses~~ issued are authorized.

(4) After the conditions specified in subsections (2) and (3) are met, municipalities and counties may, every other year thereafter, increase by ordinance the rates of business ~~local occupational license~~ taxes by up to 5 percent. The increase, however, may not be enacted by less than a majority plus one vote of the governing body.

(5) A receipt may not ~~No license shall~~ be issued unless the federal employer identification number or social security number is obtained from the person to be taxed ~~licensed~~.

Section 13. Section 205.0536, Florida Statutes, is amended to read:

205.0536 Distribution of county revenues.--A county that establishes a new rate structure under s. 205.0535 shall retain all business ~~occupational license~~ tax revenues collected from businesses, professions, or occupations whose places of business are located within the unincorporated portions of the county. Any business ~~occupational license~~ tax revenues collected by a county that establishes a new rate structure under s. 205.0535 from businesses, professions, or occupations whose places of business are located within a municipality, exclusive of the costs of collection, must be apportioned between the unincorporated area of the county and the incorporated municipalities located therein by a ratio derived by dividing

their respective populations by the population of the county. As used in this section, the term "population" means the latest official state estimate of population certified under s. 186.901. The revenues so apportioned shall be sent to the governing authority of each municipality, according to its ratio, and to the governing authority of the county, according to the ratio of the unincorporated area, within 15 days after the month of receipt.

Section 14. Section 205.0537, Florida Statutes, is amended to read:

205.0537 Vending and amusement machines.--The business premises where a coin-operated or token-operated vending machine that dispenses products, merchandise, or services or where an amusement or game machine is operated must assure that any required municipal or county business tax receipt ~~occupational license~~ for the machine is secured. The term "vending machine" does not include coin-operated telephone sets owned by persons who are in the business of providing local exchange telephone service and who pay the business tax ~~occupational license~~ under the category designated for telephone companies in the municipality or county or a pay telephone service provider certified pursuant to s. 364.3375. The business ~~license~~ tax for vending and amusement machines must be assessed based on the highest number of machines located on the business premises on any single day during the previous receipted ~~licensing~~ year or, in the case of new businesses, be based on an estimate for the current year. Replacement of one vending machine with another machine during a receipted ~~licensing~~ year does not affect the

tax assessment for that year, unless the replacement machine belongs to a business ~~an occupational license~~ tax classification that requires a higher tax rate. For the first year in which a municipality or county assesses a business ~~an occupational license~~ tax on vending machines, each business owning machines located in the municipality or county must notify the municipality or county, upon request, of the location of such machines. Each business owning machines must provide notice of the provisions of this section to each affected business premises where the machines are located. The business premises must secure the receipt ~~license~~ if it is not otherwise secured.

Section 15. Section 205.054, Florida Statutes, is amended to read:

205.054 Business ~~Occupational license~~ tax; partial exemption for engaging in business or occupation in enterprise zone.--

(1) Notwithstanding the provisions of s. 205.033(1)(a) or s. 205.043(1)(a), the governing body of a county or municipality may authorize by appropriate resolution or ordinance, adopted pursuant to the procedure established in s. 205.032 or s. 205.042, the exemption of 50 percent of the business ~~occupational license~~ tax levied for the privilege of engaging in or managing any business, profession, or occupation in the respective jurisdiction of the county or municipality when such privilege is exercised at a permanent business location or branch office located in an enterprise zone.

(2) Such exemption applies to each classification for which a business tax receipt ~~an occupational license~~ is required

in the jurisdiction. Classifications shall be the same in an enterprise zone as elsewhere in the jurisdiction. Each county or municipal business tax receipt ~~occupational license~~ issued with the exemption authorized in this section shall be in the same general form as the other county or municipal business tax receipts ~~occupational licenses~~ and shall expire at the same time as those other receipts ~~licenses~~ expire as fixed by law. Any receipt ~~license~~ issued with the exemption authorized in this section is nontransferable. The exemption authorized in this section does not apply to any penalty authorized in s. 205.053.

(3) Each tax collecting authority of a county or municipality which provides the exemption authorized in this section shall issue to each person who may be entitled to the exemption a receipt ~~license~~ pursuant to the provisions contained in this section. Before a receipt ~~license~~ with such exemption is issued to an applicant, the tax collecting authority must, in each case, be provided proof that the applicant is entitled to such exemption. Such proof shall be made by means of a statement filed under oath with the tax collecting authority, which statement indicates that the permanent business location or branch office of the applicant is located in an enterprise zone of a jurisdiction which has authorized the exemption permitted in this section.

(4) Any receipt ~~license~~ obtained with the exemption authorized in this subsection by the commission of fraud upon the issuing authority is ~~shall be deemed null and~~ void. Any person who has fraudulently obtained such exemption and thereafter engages, under color of the receipt ~~license~~, in any

business, profession, or occupation requiring the business tax receipt ~~license~~ is subject to prosecution for engaging in a business, profession, or occupation without having the required receipt ~~license~~ under the laws of the state.

(5) If ~~In the event~~ an area nominated as an enterprise zone pursuant to s. 290.0055 has not yet been designated pursuant to s. 290.0065, the governing body of a county or municipality may enact the appropriate ordinance or resolution authorizing the exemption permitted in this section; however, such ordinance or resolution will not be effective until such area is designated pursuant to s. 290.0065.

(6) This section expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act; and a receipt may not ~~no license shall~~ be issued with the exemption authorized in this section for any period beginning on or after that date.

Section 16. Section 205.063, Florida Statutes, is amended to read:

205.063 Exemptions; motor vehicles.--Vehicles used by any person receipted ~~licensed~~ under this chapter for the sale and delivery of tangible personal property at ~~either~~ wholesale or retail from his or her place of business on which a business tax ~~license~~ is paid may ~~shall~~ not be construed to be separate places of business, and a business tax ~~no license~~ may not be levied on such vehicles or the operators thereof as salespersons or otherwise by a county or incorporated municipality, any other law to the contrary notwithstanding.

Section 17. Section 205.064, Florida Statutes, is amended to read:

205.064 Farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, and tropical fish farm products; certain exemptions.--

(1) A ~~No~~ local business tax receipt is not ~~occupational license shall be~~ required of any natural person for the privilege of engaging in the selling of farm, aquacultural, grove, horticultural, floricultural, tropical piscicultural, or tropical fish farm products, or products manufactured therefrom, except intoxicating liquors, wine, or beer, when such products were grown or produced by such natural person in the state.

(2) A wholesale farmers' produce market may ~~shall have the right to~~ pay a tax of not more than $200 for a receipt ~~license~~ that will entitle the market's stall tenants to engage in the selling of agricultural and horticultural products therein, in lieu of such tenants being required to obtain individual local business tax receipts ~~occupational licenses~~ to so engage.

Section 18. Section 205.065, Florida Statutes, is amended to read:

205.065 Exemption; nonresident persons regulated by the Department of Business and Professional Regulation.--If any person engaging in or managing a business, profession, or occupation regulated by the Department of Business and Professional Regulation has paid a business ~~an occupational license~~ tax for the current year to the county or municipality in the state where the person's permanent business location or branch office is maintained, no other local governing authority

may levy a business ~~an occupational license~~ tax, or any registration or regulatory fee equivalent to the business ~~occupational license~~ tax, on the person for performing work or services on a temporary or transitory basis in another municipality or county. ~~In no event shall any~~ Work or services performed in a place other than the county or municipality where the permanent business location or branch office is maintained may not be construed as creating a separate business location or branch office of that person for the purposes of this chapter. Any properly licensed contractor asserting an exemption under this section who is unlawfully required by the local governing authority to pay a business ~~an occupational license~~ tax, or any registration or regulatory fee equivalent to a business ~~the occupational license~~ tax, has ~~shall have~~ standing to challenge the propriety of the local government's actions, and the prevailing party in such a challenge is entitled to recover a reasonable attorney's fee.

Section 19. Section 205.162, Florida Statutes, is amended to read:

205.162 Exemption allowed certain disabled persons, the aged, and widows with minor dependents.--

(1) All disabled persons physically incapable of manual labor, widows with minor dependents, and persons 65 years of age or older, with not more than one employee or helper, and who use their own capital only, not in excess of $1,000, may ~~shall be allowed to~~ engage in any business or occupation in counties in which they live without being required to pay ~~for~~ a business tax ~~license~~. The exemption provided by this section shall be allowed

only upon the certificate of the county physician, or other reputable physician, that the applicant claiming the exemption is disabled, the nature and extent of the disability being specified therein, and in case the exemption is claimed by a widow with minor dependents, or a person over 65 years of age, proof of the right to the exemption shall be made. Any person entitled to the exemption provided by this section shall, upon application and furnishing of the necessary proof as aforesaid, be issued a receipt ~~license~~ which shall have plainly stamped or written across the face thereof the fact that it is issued under this section, and the reason for the exemption shall be written thereon.

(2) Neither ~~In no event under~~ this nor ~~or~~ any other law exempts ~~shall~~ any person~~, veteran or otherwise, be allowed any exemption whatsoever~~ from the payment of any amount required by law for the issuance of a license to sell intoxicating liquors or malt and vinous beverages.

Section 20. Section 205.171, Florida Statutes, is amended to read:

205.171 Exemptions allowed disabled veterans of any war or their unremarried spouses.--

(1) Any bona fide, permanent resident elector of the state who served as an officer or enlisted person during any of the periods specified in s. 1.01(14) in the Armed Forces of the United States, National Guard, or United States Coast Guard or Coast Guard Reserve, or any temporary member thereof, who has actually been, or may hereafter be, reassigned by the air force, army, navy, coast guard, or marines to active duty during any

war, declared or undeclared, armed conflicts, crises, etc., who was honorably discharged from the service of the United States, and who at the time of his or her application for a business tax receipt is ~~license as hereinafter mentioned shall be~~ disabled from performing manual labor shall, upon sufficient identification, proof of being a permanent resident elector in the state, and production of an honorable discharge from the service of the United States:

(a) Be granted a receipt ~~license~~ to engage in any business or occupation in the state which may be carried on mainly through the personal efforts of the receiptholder ~~licensee~~ as a means of livelihood and for which the state license or~~,~~ county~~,~~ or municipal receipt ~~license~~ does not exceed the sum of $50 for each without payment of any business ~~license~~ tax otherwise provided for by law; or

(b) Be entitled to an exemption to the extent of $50 on any receipt ~~license~~ to engage in any business or occupation in the state which may be carried on mainly through the personal efforts of the receiptholder ~~licensee~~ as a means of livelihood when the state license or~~,~~ county~~,~~ or municipal receipt ~~license~~ for such business or occupation is ~~shall be~~ more than $50. The exemption ~~heretofore referred to~~ shall extend to and include the right of the receiptholder ~~licensee~~ to operate an automobile-for-hire of not exceeding five-passenger capacity, including the driver, when ~~it shall be made to appear that~~ such automobile is ~~bona fide~~ owned or contracted to be purchased by the receiptholder ~~licensee~~ and is being operated by him or her as a means of livelihood and that the proper business ~~license~~ tax for

the operation of such motor vehicle for private use has been applied for and attached to the ~~said~~ motor vehicle and the proper fees ~~therefor~~ paid by the receiptholder ~~licensee~~.

(2) When ~~any~~ such person applies ~~shall apply~~ for a receipt ~~license~~ to conduct any business or occupation for which ~~either~~ the county or municipal business ~~license~~ tax exceeds ~~as fixed by law shall exceed the sum of~~ $50, the remainder of such ~~license~~ tax in excess of $50 shall be paid in cash.

(3) Each ~~and every~~ tax collecting authority of this state and of each county ~~thereof~~ and each municipality ~~therein~~ shall issue to such persons as may be entitled hereunder a receipt ~~license~~ pursuant to the foregoing provision and subject to the conditions thereof. Such receipt ~~license~~ when issued shall be marked across the face ~~thereof~~ "Veterans Exempt Receipt ~~License~~"--"Not Transferable." Before issuing the receipt ~~same~~, proof shall be duly made ~~in each case~~ that the applicant is entitled under ~~the conditions of~~ this law to receive the exemption ~~herein provided for~~. The proof may be made by establishing to the satisfaction of such tax collecting authority by means of certificate of honorable discharge or certified copy thereof that the applicant is a veteran within the purview of this section and by exhibiting:

(a) A certificate of government-rated disability to an extent of 10 percent or more;

(b) The affidavit or testimony of a reputable physician who personally knows the applicant and who makes oath that the applicant is disabled from performing manual labor as a means of livelihood;

(c) The certificate of the veteran's service officer of the county in which applicant lives, duly executed under the hand and seal of the chief officer and secretary thereof, attesting the fact that the applicant is disabled and entitled to receive a receipt ~~license~~ within the meaning and intent of this section;

(d) A pension certificate issued to him or her by the United States by reason of such disability; or

(e) Such other reasonable proof as may be required by the tax collecting authority to establish the fact that such applicant is ~~so~~ disabled.

All receipts ~~licenses~~ issued under this section shall be in the same general form as other state, county, and municipal licenses and shall expire at the same time as such other licenses are fixed by law to expire.

(4) Receipts ~~All licenses~~ obtained ~~under the provisions of this section~~ by the commission of fraud upon any issuing authority are ~~shall be deemed null and~~ void. Any person who has fraudulently obtained a receipt ~~any such license~~, or who has fraudulently received any transfer of a receipt ~~license~~ issued to another, and has thereafter engaged in any business or occupation requiring a receipt ~~license~~ under color thereof is ~~shall be~~ subject to prosecution ~~as~~ for engaging in a business or occupation without having the required receipt ~~license~~ under the laws of the state. Such receipt may ~~license shall~~ not be issued in any county other than the county where the ~~wherein said~~ veteran is a ~~bona fide~~ resident citizen elector, unless such

veteran produces ~~applying therefor shall produce to the tax collecting authority in such county~~ a certificate of the tax collector of his or her home county to the effect that no exemption from taxation ~~license~~ has been granted to such veteran in his or her home county under ~~the authority of~~ this section.

(5) Neither ~~In no event, under~~ this nor ~~or~~ any other law exempts~~, shall~~ any person~~, veteran or otherwise, be allowed any exemption whatsoever~~ from the payment of any amount required by law for the issuance of a license to sell intoxicating liquors or malt and vinous beverages.

(6) The unremarried spouse of a ~~the~~ deceased disabled veteran of any war in which the United States Armed Forces participated is ~~will be~~ entitled to the same exemptions as the disabled veteran.

Section 21. Section 205.191, Florida Statutes, is amended to read:

205.191 Religious tenets; exemption.--~~Nothing in~~ This chapter does not ~~shall be construed to~~ require a business tax receipt ~~license~~ for practicing the religious tenets of any church.

Section 22. Section 205.192, Florida Statutes, is amended to read:

205.192 Charitable, etc., organizations; occasional sales, fundraising; exemption.--A business tax receipt is not ~~No occupational license shall be~~ required of any charitable, religious, fraternal, youth, civic, service, or other similar ~~such~~ organization that ~~when the organization~~ makes occasional sales or engages in fundraising projects that ~~when the projects~~

are performed exclusively by the members, ~~thereof~~ and ~~when~~ the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic, and service activities of the organization.

Section 23. Section 205.193, Florida Statutes, is amended to read:

205.193 Mobile home setup operations; local business tax receipt ~~license~~ prohibited; exception.--A ~~No~~ county, municipality, or other unit of local government may not require a ~~duly~~ licensed mobile home dealer or a ~~duly~~ licensed mobile home manufacturer, or an employee of a ~~such~~ dealer or manufacturer, who performs setup operations as defined in s. 320.822 to be a business tax receiptholder ~~licensed~~ to engage in such operations. However, such dealer or manufacturer must ~~shall be required to~~ obtain a local receipt ~~occupational license~~ for his or her permanent business location or branch office, which receipt ~~license~~ shall not require for its issuance any conditions other than those required by chapter 320.

Section 24. Section 205.194, Florida Statutes, is amended to read:

205.194 Prohibition of local business tax receipt ~~occupational licensure~~ without exhibition of state license or registration.--

(1) Any person applying for or renewing a local business tax receipt ~~occupational license~~ for the ~~licensing~~ period beginning October 1, 1985, to practice any profession regulated by the Department of Business and Professional Regulation, or any board or commission thereof, must exhibit an active state

certificate, registration, or license, or proof of copy of the same, before such local receipt ~~occupational license~~ may be issued. Thereafter, only persons applying for the first time for a receipt ~~local occupational license~~ must exhibit such certification, registration, or license.

(2) The Department of Business and Professional Regulation shall, by August 1 of each year, supply to the local official who issues local business tax receipts ~~occupational licenses~~ a current list of professions it regulates and information regarding those persons for whom receipts ~~local occupational licenses~~ should not be renewed due to the suspension, revocation, or inactivation of such person's state license, certificate, or registration. The official who issues local business tax receipts ~~occupational licenses~~ shall not renew such license unless such person can exhibit an active state certificate, registration, or license.

(3) This section shall not apply to s. 489.113, s. 489.117, s. 489.119, s. 489.131, s. 489.511, s. 489.513, s. 489.521, or s. 489.537.

Section 25. Section 205.196, Florida Statutes, is amended to read:

205.196 Pharmacies and pharmacists.--A ~~No~~ state, county, or municipal licensing agency may not ~~shall~~ issue a business tax receipt ~~an occupational license~~ to operate a pharmacy unless the applicant produces ~~shall first exhibit~~ a current permit issued by the Board of Pharmacy; however, no such receipt is ~~occupational license shall be~~ required ~~in order~~ to practice the profession of pharmacy.

Section 26. Section 205.1965, Florida Statutes, is amended to read:

205.1965 Assisted living facilities.--A county or municipality may not issue a business tax receipt ~~an occupational license~~ for the operation of an assisted living facility pursuant to part III of chapter 400 without first ascertaining that the applicant has been licensed by the Agency for Health Care Administration to operate such facility at the specified location or locations. The Agency for Health Care Administration shall furnish to local agencies responsible for issuing business tax receipts ~~occupational licenses~~ sufficient instructions for making the ~~above~~ required determinations.

Section 27. Section 205.1967, Florida Statutes, is amended to read:

205.1967 Prerequisite for issuance of pest control business tax receipt ~~occupational license~~.--A municipality or county may not issue a business tax receipt ~~an occupational license~~ to any pest control business regulated ~~coming~~ under chapter 482~~,~~ unless a current license has been procured from the Department of Agriculture and Consumer Services for each of its business locations in that municipality or county. Upon presentation of the requisite licenses from the department and the required fee, a business tax receipt ~~an occupational license~~ shall be issued by the municipality or county in which application is made.

Section 28. Section 205.1969, Florida Statutes, is amended to read:

205.1969 Health studios; consumer protection.--A ~~No~~ county or municipality may not ~~shall~~ issue or renew a business tax receipt ~~an occupational license~~ for the operation of a health studio pursuant to ss. 501.012-501.019 or ballroom dance studio pursuant to s. 501.143, unless such business exhibits a current license, registration, or letter of exemption from the Department of Agriculture and Consumer Services.

Section 29. Section 205.1971, Florida Statutes, is amended to read:

205.1971 Sellers of travel; consumer protection.--A ~~No~~ county or municipality may not ~~shall~~ issue or renew a business tax receipt ~~an occupational license~~ to engage in business as a seller of travel pursuant to part XI of chapter 559 unless such business exhibits a current registration or letter of exemption from the Department of Agriculture and Consumer Services.

Section 30. Section 205.1973, Florida Statutes, is amended to read:

205.1973 Telemarketing businesses; consumer protection.--A county or municipality may not issue or renew a business tax receipt ~~an occupational license~~ for the operation of a telemarketing business under ss. 501.604 and 501.608, unless such business exhibits a current license or registration from the Department of Agriculture and Consumer Services or a current affidavit of exemption.

Section 31. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1431 CS Impact Fees
SPONSOR(S): Cretul
TIED BILLS: **IDEN./SIM. BILLS:** SB 1196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Growth Management Committee	7 Y, 2 N, w/CS	Strickland	Grayson
2) Fiscal Council		Monroe KDM	Kelly dlw
3) State Infrastructure Council			
4)			
5)			

SUMMARY ANALYSIS

HB 1431 creates s. 163.31801, F.S., the "Impact Fee Act." The bill provides a framework for the creation of impact fee ordinances and levy of impact fees.

The bill provides legislative findings and legislative intent regarding the need for and use of impact fees.

The bill provides definitions for the applicable terms within the "Impact Fee Act."

The bill requires that impact fees:

- Be a one time charge, although partial payments may be collected over time during the course of a development.
- Be used for capital outlay projects only.
- Represent a proportionate share of the cost of the project that is needed to serve new development.

The bill authorizes local governments to levy impact fees pursuant to its home rule authority.

The bill authorizes special districts to levy impact fees only when authorized to do so by general law.

The bill requires public notice prior to the enactment of an impact fee ordinance.

The bill sets forth certain criteria for a impact fee ordinance.

The bill authorizes an exemption from the levy of an impact fee and requires specification of the criteria used in determining such an exemption and the alternative source of revenue which will offset the fee that is exempted.

The bill requires that an impact fee ordinance include a credits calculation with specified provisions regarding the calculation and requiring a credit against certain types of taxes and other payments.

The bill provides that an impact fee ordinance enacted prior to July 1, 2006, need not comply with the provisions of this bill until July 1, 2008.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on state government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill creates a framework for establishing an impact fee ordinance and levying impact fees. To the extent that current impact fee ordinances and levying practices are inconsistent with the provisions of this bill, those required to pay impact fees may pay more or less. For those local governments that do not currently levy impact fees, creation of an impact fee ordinance and the levying of impact fees pursuant to the provisions would create an additional cost to those required to pay the impact fee.

B. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes:

HB 1431 creates s. 163.31801, F.S., the "Impact Fee Act."

Legislative findings and intent:

The bill provides legislative findings that:

- Impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth.
- Impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction.

The bill provides legislative intent to ensure that impact fees throughout the state are used to maintain adequate public facilities, represent a proportionate share of the cost of each public facility, and promote orderly growth and development.

Definitions:

The bill provides the following definitions relating to impact fees:

- Capital outlay project – The buildings, equipment, and structures that are built, installed, or established to serve the need for infrastructure in a new or expanded development, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, education, parks, and recreational projects.
- Impact fee: A total or partial reimbursement to a local government for the cost of the additional public facilities or services necessitated by new development or the expansion of existing development.
- Local Government: A county, municipality, or special district that is authorized by its enabling legislation or by general law to impose an impact fee.
- Public Notice: Notice as required by s. 125.66(2), F.S., for a county, s. 166.041 (3) (a), F.S., for a municipality, or s. 189.417, F.S., for a special district.
- Rational Nexus: A reasonable connection.

Impact fee requirements:

The bill requires an impact fee to do the following:

- Be a one-time charge, although the charge may be paid at certain times over the course of the development process.

- Be used for capital outlay projects only. Specifically, the impact fee may not be used to fund operating costs and infrastructure deficiencies.
- Represent a proportionate share of the cost of the capital outlay project that is needed to serve the new development.

Authorization to levy impact fees:

The bill authorizes to a local government by its home rule power, to adopt an impact fee ordinance within its jurisdiction in order to fund infrastructure necessary to serve new development.

The bill further authorizes a special district to levy an impact fee only if it is authorized to so by general law.

Notice:

The bill provides that public notice must be given prior to a county, municipality, or special district enacting an impact fee ordinance.

Impact fee ordinance requirements:

The bill provides that an impact fee must do the following:

- Specify the geographical area to be served by the collection of the impact fee.
- Specify that there is a rational nexus between the anticipated need for the capital outlay project and the growth generated by the new development.
- Specify that there is a rational nexus between the anticipated use of the revenue that is collected from the impact fee and the benefits that will accrue to the new development upon completion of the capital outlay project.
- Specify the criteria and methodology used to calculate the amount of the impact fee and the assumptions on which they are based.
- Demonstrate that the impact fee does not exceed a proportionate share of the cost of the capital outlay project or system improvement needed to serve the new development.
- Specify certain times during the development process when partial payments of the impact fee are due.
- Require that the revenue from the impact fee is spent only on the capital outlay project for which the fee was collected.
- Specify that the revenue from the impact fee that is collected by a local government shall be deposited into an interest-bearing account. The interest from the account shall also be used only for the capital outlay project.
- Specify that the revenue from the impact fee and disbursement shall be accounted for and reported separately from other governmental sources of revenue. The accounting and reporting of the revenue from an impact fee shall be available for audit pursuant to s. 218.39, F.S.
- Provide a process for refunding an impact fee that was not expended on or encumbered for the capital outlay project for which it was collected within a reasonable amount of time, not to exceed 8 years following the date of the adoption of the ordinance.
- Specify who is entitled to a refund after the time for construction of the capital outlay project has expired. [developer, property owner of record at the time of the refund, some other individual entity]

Impact fee credits:

The bill authorizes an impact fee ordinance to provide credits for outside funding sources, improvements initiated by developers, in-kind contributions, and local tax payments that fund capital improvements.

In addition, the bill requires that an ordinance levying an impact fee must include a calculation of the amount of the fee to be paid as credit against a specified series of other payments. The calculation is required to estimate such payments for at least the useful life of the type of project for which the impact fee is imposed, including adjustments to account for inflation, increased taxable values, and increased payments. Additionally, the calculation is required to use a discount rate no greater than the current costs of borrowing to finance such capital improvements; and is required to be based solely upon the estimated payments from new development and the property upon which the new development is located. Further, the bill requires that an impact fee also provide a credit for all taxes or other payments of any kind through state, federal, or other revenues anticipated to be expended to construct capital outlay projects of the same type for which the fee is imposed. Finally, the bill requires that such impact fees only be used to supplement other funds used to construct capital outlay projects.

Impact fee exemptions:

The bill requires that an ordinance levying an impact fee must include a calculation of the amount of the fee to be paid as credit against a specified series of other payments. The calculation is required to estimate such payments for at least the useful life of the type of project for which the impact fee is imposed, including adjustments to account for inflation, increased taxable values, and increased payments. Additionally, the calculation is required to use a discount rate no greater than the current costs of borrowing to finance such capital improvements; and is required to be based solely upon the estimated payments from new development and the property upon which the new development is located. Further, the bill requires that an impact fee also provide a credit for all taxes or other payments of any kind through state, federal, or other revenues anticipated to be expended to construct capital outlay projects of the same type for which the fee is imposed. Finally, the bill requires that such impact fees only be used to supplement other funds used to construct capital outlay projects.

Compliance:

The bill provides that an impact fee ordinance that is enacted before July 1, 2006, need not comply with the provisions in this bill until July 1, 2008.

Background:

The Florida Constitution grants local governments broad home rule authority. Impact fees are a unique product of local governments' home rule powers, and the development of such fees has occurred in Florida by home rule ordinance rather than by direct statutory authorization or mandate. Therefore, the characteristics and limitations of impact fees are found in Florida case law rather than statute.[1]

There have been a number of court decisions that address impact fees.[2] In *Hollywood, Inc. v. Broward County*,[3] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if it offsets needs that are sufficiently attributable to the new developement and the fees collected are adequately earmarked for the benefit of the residents of the new development.[4] In order to show the impact fee meets those requirements, the local government must demonstrate a rational nexus between the need for additional public facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[5] Because the ordinance at issue satisfied these requirements, the court affirmed the circuit court's validation of the ordinance.[6]

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[1] This information is adapted from the Legislative Committee on Intergovernmental Relations (LCIR) publication *Local Government Financial Information Handbook*, 2002 Edition, p. 25.

[2] See, e.g., *Contractors & Builders Ass'n v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983).

[3] 431 So. 2d 606 (Fla. 4th DCA 1983).

[4] *See id.* at 611.

[5] *See id.* at 611-612.

[6] *See id* at 614.

The Florida Supreme Court addressed the issue of impact fees for school facilities in *St. Johns County v. Northeast Builders Association, Inc.*[7] The ordinance at issue conditioned the issuance of a new building permit on the payment of an impact fee. Those fees that were collected were placed in a trust fund for the school board to expend solely "to acquire, construct, expand and equip the educational sites and educational capital facilities necessitated by new development."[8] Also, the ordinance provided for a system of credits to fee-payers for land contributions or the construction of educational facilities. This ordinance required funds not expended within six years to be returned, along with interest on those funds, to the current landowner upon application.[9]

The court applied the dual rational nexus test and found the county met the first prong of the test, but not the second. The builders in *Northeast Builders Association, Inc.* argued that many of the residences in the new development would have no impact on the public school system. The court found the county's determination that every 100 residential units would result in the addition of forty-four students in the public school system was sufficient and, therefore, concluded the first prong of the test was satisfied. However, the court found that the ordinance did not restrict the use of the funds to sufficiently ensure that such fees would be spent to the benefit of those who paid the fees.[10]

Recent decisions have further clarified the extent to which impact fees may be imposed. In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[11] In City *of Zephyrhills v. Wood*, the district court upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[12]

As developed under case law, a legally sufficient impact fee has the following characteristics:

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for pubic facilities;
- the fee represents a proportional share of the cost of public facilities needed to serve new development;
- the fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- the fee is a one-time charge, although collection may be spread over a period of time;
- the fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions towards the cost of the increased capacity for public facilities.

The Legislative Committee on Intergovernmental Relations (LCIR) reports that forty counties imposed impact fees in FY 2001/02, collecting $466,571,712. In addition, 156 municipalities levying impact fees collected $133,132,215 in FY 2001/02, with thirty-one cities collecting more than $1 million. The largest category of impact fees is transportation for counties, and physical environment for municipalities. An estimated 19 counties levy school impact fees on behalf of school districts in their county.

The 2005 Florida Legislature created the Florida Impact Fee Review Task Force (Task Force). The Task Force was comprised of 15 members representing the state and local governments, the building

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[7] 583 So. 2d 635 (Fla. 1991)

[8] *See id.* at 637, citing, St. Johns County, Fla., Ordinance 87-60, § 10(B) (Oct. 20, 1987).

[9] *See id.* at 637

[10] *See id.* at 639. Because the St. Johns County ordinance was not effective within a municipality absent an interlocal agreement between the county and municipality, there was the possibility that impact fees could be used to build a school for development within a municipality that is not subject to the impact fee.

[11] 760 So. 2d 126 (Fla. 2000), at 134. Volusia County had imposed a school impact fee on a mobile home park for persons aged 55 and older.

[12] 831 So. 2d 233 (Fla. 2d DCA 2002)

and development community, the school boards, and an affordable housing advocate. The Task Force was established to serve as an advisory body to the Legislature on the issue of impact fees.

In the Task Force's final report issued to the Legislature, they proposed a number of recommended statutory changes to existing law rather than the creation of a uniform impact fee statute. Further, the task force offered the following recommendations:

- Data – Require local governments to use the most recent and localized data when calculating an impact fee.
- Affordable Housing – Require that all impact fee ordinances significantly address affordable housing. This may include waiving, deferring, exempting, paying out of another source, or establishing a significant affordable housing program. They further recommend fully funding the Sadowski Act.
- Accounting and Reporting Collections and Expenditures – Require that all impact fee collections and expenditures be accounted and reported.
- Notice – Require that local governments provide notice of not less than 90 days before the effective date of an impact fee ordinance.
- Administrative Charges – Require that administrative charges for impact fee collections be limited to "no more than actual cost."

In the Task Force's report, they recommended no statutory guidance regarding the following impact fee topics:

- Methodology used to calculate impact fees;
- Sharing of impact fees between counties and cities;
- Timing of impact fee payments;
- Time limits for the expenditure of impact fee collections and impact fee refunds;
- Switching the legal burden of proof for impact fee challenges;
- Creation of a presumptively unchallengeable impact fee;
- Impact fee caps; and
- A model impact fee ordinance.

The Task Force recommended that the Legislature consider the following alternative revenue sources for local governments to meet their infrastructure demands:

- Authorizing passage of the Local Option Sales Tax, which includes the Local Government Infrastructure Surtax and the Small County Surtax by majority or supermajority vote of the Board of County Commissioners, and the School Capital Outlay Surtax by majority or supermajority vote of the District School Board, as an option to the referendum requirement;
- Increasing the bonding capacity of County Revenue Sharing Dollars;
- Finding an alternative to augment the Public Education Capital Outlay (PECO) fund;
- Fully funding the Sadowski program for affordable housing, and
- Authorizing all local governments to assess a Documentary Stamp Surtax, similar to Miami-Dade County's $0.45 per $100.

C. SECTION DIRECTORY:

Section 1: Creates s. 163.31801, F.S., relating to impact fees.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   The bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate: Local governments that have not already established impact fees may benefit by establishing impact fees consistent with the provisions of this bill. Other local governments that have already established impact fees may either benefit or not based upon the consistency of their impact fee ordinance with the provisions of this bill.

2. Expenditures:

   Indeterminate: Some local governments may need to reenact existing impact fee ordinances to come into compliance with the provisions of this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate: To the extent that impact fee ordinances have been created and impact fees levied inconsistent with the provisions of this bill, the development community may or may not benefit from the passage of this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Growth Management Committee adopted one amendment. The amendment requires that an ordinance levying an impact fee must include a calculation of the amount of the fee to be paid as credit against a specified series of other payments. The calculation is required to estimate such payments for at least the useful life of the type of project for which the impact fee is imposed, including adjustments to account for inflation, increased taxable values, and increased payments. Additionally, the calculation is required to use a discount rate no greater than the current costs of borrowing to finance such capital improvements; and is required to be based solely upon the estimated payments from new development and the property upon which the new development is located. Further, the amendment requires that an impact fee also provide a credit for all taxes or other payments of any kind through state, federal, or other revenues anticipated to be expended to construct capital outlay projects of the same type for which the fee is imposed. Finally, the amendment requires that such impact fees only be used to supplement other funds used to construct capital outlay projects.

CHAMBER ACTION

The Growth Management Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to impact fees; creating s. 163.31801, F.S.; creating the "Impact Fee Act"; providing legislative intent; providing definitions; requiring that an impact fee meet certain specified requirements; authorizing local governments to adopt ordinances to levy impact fees to fund certain infrastructure needs; requiring public notice before such ordinances are enacted; requiring such ordinances to specify certain criteria for calculating and imposing impact fees; specifying certain requirements for the use of fee revenues; providing a process for refunding fees, including certain credits; specifying the use of fee revenues to supplement certain funds; authorizing certain credits and exemptions for certain developments; providing certain dates for compliance; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 163.31801, Florida Statutes, is created to read:

163.31801 Impact fees; short title; intent; definitions; ordinances levying impact fees.--

(1) This section may be cited as the "Impact Fee Act."

(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the increased reliance of local governments on impact fees, it is the intent of the Legislature to ensure that impact fees throughout the state are used to maintain adequate public facilities, represent a proportionate share of the cost of each public facility, and promote orderly growth and development.

(3) As used in this section, the term:

(a) "Capital outlay project" means the buildings, equipment, and structures that are built, installed, or established to serve the need for infrastructure in a new or expanded development, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, education, parks, and recreational projects.

(b) "Impact fee" means a total or partial reimbursement to a local government for the cost of the additional public facilities or services necessitated by new development or the expansion of existing development.

(c) "Local government" means a county, municipality, or special district that is authorized by its enabling legislation or by general law to impose an impact fee.

(d) "Public notice" means notice as required by s. 125.66(2) for a county, s. 166.041(3)(a) for a municipality, or s. 189.417 for a special district. The procedures for public notice which are required in this section are established as the minimum procedures for public notice.

(e) "Rational nexus" means a reasonable connection.

(4) An impact fee must:

(a) Be a one-time charge, although partial payments may be collected at certain times over the course of the development process.

(b) Be used for capital outlay projects only. Operating costs and infrastructure deficiencies may not be funded by the revenue from the impact fee.

(c) Represent a proportionate share of the cost of the capital outlay project that is needed to serve the new development.

(5) A local government is authorized by its home rule power to adopt an ordinance levying an impact fee within its jurisdiction in order to fund the need for infrastructure created by new development or the expansion of existing development. A special district may levy an impact fee only if it is authorized to do so by general law.

(6) Before enacting an ordinance levying an impact fee, a county, municipality, or special district must give public notice of the proposed enactment.

(7) The ordinance levying an impact fee must:

(a) Specify the geographical area to be served by the collection of the impact fee.

(b) Specify that there is a rational nexus between the anticipated need for the capital outlay project and the growth generated by the new development.

(c) Specify that there is a rational nexus between the anticipated use of the revenue that is collected from the impact fee and the benefits that will accrue to the new development upon completion of the capital outlay project.

(d) Specify the criteria and methodology used to calculate the amount of the impact fee and the assumptions on which they are based.

(e) Demonstrate that the impact fee does not exceed a proportionate share of the cost of the capital outlay project or system improvement needed to serve the new development.

(f) Specify certain times during the development process when partial payments of the impact fee are due.

(g) Require that the revenue from the impact fee is spent only on the capital outlay project for which the fee was collected.

(h) Specify that the revenue from the impact fee that is collected by a local government shall be deposited into an interest-bearing account. The interest from the account shall also be used only for the capital outlay project.

(i) Specify that the revenue from the impact fee and disbursement shall be accounted for and reported separately from other governmental sources of revenue. The accounting and

reporting of the revenue from an impact fee shall be available for audit pursuant to s. 218.39.

(j) Provide a process for refunding an impact fee that was not expended on or encumbered for the capital outlay project for which it was collected within a reasonable amount of time, not to exceed 8 years following the date of the adoption of the ordinance. A refund may be required after the time for construction of the capital outlay project has expired. An ordinance levying an impact fee must specify who is entitled to the refund, whether it is the developer, the property owner of record at the time of the refund, or some other individual or entity.

(8) An ordinance levying an impact fee must include the calculation of the amount of the fee to be paid a credit for the full present value of all taxes, fees, assessments, liens, charges, or other payments of any kind that have been or will be available to the local government or other facility provider and that will be used to construct capital outlay projects of the same type for which the impact fee is imposed. The calculation of the credit shall:

(a) Estimate such payments for a period of not less than the useful life of the type of project for which the fee is imposed.

(b) Include adjustments in the estimated annual payments to account for inflation, increased taxable values, and increased payments.

(c) Use a discount rate no greater than the current costs of borrowing to finance such capital improvements.

(d) Be based solely upon the estimated payments from new development and the property upon which the new development is located.

(9) A local government imposing an impact fee shall also provide a credit for all taxes or other payments of any kind through state, federal, or other revenues anticipated to be expended to construct capital outlay projects of the same type for which the impact fee is imposed.

(10) An ordinance levying an impact fee must specify that impact fees may only be used to supplement other funds utilized to construct capital outlay projects.

(11) An ordinance levying an impact fee may provide credits for outside funding sources, improvements initiated by developers, in-kind contributions, and local tax payments that fund capital improvements.

(12) An ordinance levying an impact fee may exempt all or part of a development from the impact fee. The ordinance must specify the criteria used in determining an exemption and the alternative source of revenue which will offset the fee that is exempted.

(13) An ordinance levying an impact fee which is enacted before July 1, 2006, need not comply with the provisions of this section until July 1, 2008.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1623 CS Persons with Disabilities
SPONSOR(S): Bean
TIED BILLS: **IDEN./SIM. BILLS:** SB 1278

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Elder & Long-Term Care Committee	9 Y, 0 N, w/CS	DePalma	Walsh
2) Fiscal Council		Ekholm	Kelly
3) Health & Families Council			
4)			
5)			

SUMMARY ANALYSIS

House Bill 1623 CS creates the Interagency Services Committee for Youth and Young Adults with Disabilities within the Agency for Persons with Disabilities. It directs the committee to establish goals to ensure the successful transition to employment or further education of youth and young adults with disabilities and to eliminate barriers that impede educational opportunities leading to future employment.

The bill specifies committee membership and directs the Department of Children and Family Services, the Department of Education, the Department of Health, and the Agency for Persons with Disabilities to provide staff support to the committee. The bill also provides duties and responsibilities of the committee.

The committee shall present a progress report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2007, and a final report detailing committee findings and recommendations by January 1, 2008. The committee is abolished on June 1, 2008.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families—The bill is intended to eliminate barriers to educational opportunities for, and to ensure the successful transition to employment or further education of, youth and young adults with disabilities.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND[1]

Children with disabilities face significant obstacles as they transition out of traditional educational and service arrangements. According to the National Organization on Disability's Harris Survey of Americans with Disabilities:

- young people with disabilities drop out of high school at twice the rate of their peers;
- as many as 90 percent of children with disabilities are living at poverty level three years after graduation;
- 80 percent of people with significant disabilities are not working; and
- currently, only one out of ten persons with a developmental disability will achieve integrated, competitive employment, and most will earn less than $2.40 an hour in a sheltered workshop.[2]

Florida-specific data also reveals disparities in graduation rates and employment opportunities for youths with disabilities. As reported by the Florida Department of Education's Data Warehouse, the graduation rate in 2003-04 for students with disabilities was only 36.6 percent (8,376 out of a total 22,890 disabled students graduated), while 68.6 percent of other, non-disabled students graduated (117,706 out of a total of 171,447 students). Moreover, a mere 12 percent of students with disabilities were enrolled in postsecondary programs,[3] and only 17.5 percent of students with developmental disabilities were employed after leaving secondary schools, with average quarterly earnings of approximately $3,700.

The Individuals with Disabilities Education Act (IDEA) requires that schools provide a free and appropriate education (FAPE) to all students who have not reached age 22 and have not earned a regular high school diploma. A student who graduates with a credential other than a standard diploma, and who chooses to continue to receive FAPE, can continue to generate funding through the Florida Education Financing Program (FEFP) until receiving a standard diploma or "aging out." A student with disabilities ages out when he or she reaches age 22 or completes the school year in which they turn 22. In December 2004, there were 364,877 students ages six to 21 served under IDEA, Part B, representing approximately 15 percent of total public school students.[4]

The transition to adulthood is a difficult process for all adolescents, but such transition presents additional challenges for young people with disabilities. Various transition services and supports are necessary to assist adolescents in adjusting to the change from the home and school environment to independent living and meaningful employment. Students with disabilities often face this process ill-

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[1] A substantial portion of the background analysis is patterned after the Senate Staff Analysis to identical Senate Bill 1278, prepared by the Senate Committee on Children and Families.

[2] The 2004 National Organization on Disability/Harris Survey of Americans with Disabilities, www.nod.org

[3] According to 2002 Florida Education and Training Placement Information Program (FETPIP) surveys, as reported by Florida Developmental Disabilities Council, Inc.

[4] Florida Department of Education, Bureau of Exceptional Education and Student Services, http://www.firn.edu/doef

equipped for further vocational training, post secondary education, or securing gainful employment. According to Agency for Persons with Disabilities, some of the barriers to a smooth transition include:

- Students leaving school are often placed on a waitlist for adult services, and may not be able to keep a job they had previously obtained in school because of a lack of transitional supports as adults. Medicaid waiver rules require students to return to school for services until age 22 if they have a special education diploma.
- Youths with disabilities and their families often are unprepared for the transition from an entitlement program (such as a free and appropriate education) to an adult service system.
- Priorities and expectations in the systems serving children and youths with disabilities are very different than the structure of the service and support system for adults, which is primarily focused on community integration.
- Commitment to the philosophy of self-determination and choice varies across agencies; in some programs self-determination is the cornerstone of the supports, while other agencies provide fewer choices in services and supports.
- Eligibility for services and supports vary by agency, and often support staff and families may be unaware of services for which they are eligible because planning processes are frequently not coordinated.
- Social Security benefits often create a disincentive to work. Individuals on Social Security Disability Income (SSDI) who require supports and health benefits to obtain a job lose eligibility for those services if they make more than $830 per month, thus losing the benefits that enable them to obtain and keep meaningful employment.
- Agencies may have different criteria for providers of the same service. For example, supported employment services can be offered by either not-for-profit or for-profit providers through the Agency for Persons with Disabilities. The Division of Vocational Rehabilitation (DOE), however, requires that such providers be not-for-profit.

Although there are a variety of federal and state programs and agencies with some involvement in meeting the educational and vocational needs of children and adolescents with disabilities, successfully integrating these efforts has proven difficult. Recently, there have been several statewide initiatives focused on helping to identify challenges faced by young adults with disabilities as they transition from high school to adult life, and developing strategies to create an effective transition system. The state agencies involved in these interagency activities include Agency for Persons with Disabilities, the Department of Education, the Department of Children and Families, the Department of Health, the Agency for Health Care Administration, and the Department of Juvenile Justice. A variety of private organizations and individuals have also been involved in these activities, including the Able Trust, the Advocacy Center for Persons with Disabilities, Inc., the ADA Working Group, Center for Autism and Related Disabilities at the University of South Florida, Family Network on Disabilities of Florida, Inc., the Florida Developmental Disabilities Council, Inc., the Florida Independent Living Council, Inc., the Florida Institute for Family Involvement, the Florida Recreation and Parks Association, the Florida Rehabilitation Council, the Florida Schools Health Association, the Transition Center at the University of Florida, the Transition to Independence Process Project, Workforce Florida, Inc., parents, self-advocates, and teachers from throughout the state.[5]

Florida's Partners in Transition

In 2003, a partnership of agencies was formed under the auspices of the Florida Developmental Disabilities Council (FDDC) to identify issues and barriers faced by Florida's disabled youth as they transition from high school to adulthood. The partnership contracted with national experts to examine existing research and documents on transition, and held three public forums. As a result, a workgroup of 40 individuals was put together in March 2003 to review the findings and draft a statewide strategic

[5]Florida Partners in Transition, http://partnersintransition.org/members.htm

plan for transition. In September 2003, a team of Florida representatives attended the National Leadership Summit on Improving Results, which provided additional impetus for developing interagency partnerships for transition planning. Since that time, Florida's Partners in Transition has developed the Florida Strategic Plan on Transition, defining how state agencies, organizations, families, youth, and government programs can work together to reach young Floridians with disabilities in an attempt to support their transition to independence through education, meaningful work and a life in the community. A statewide summit was hosted January 25-26, 2005, for the purpose of providing an opportunity for local level leadership teams to be introduced to the Partners in Transition State Strategic Plan, to host facilitated planning sessions for the implementation of the strategic plan within their areas, and to hear from state and national experts on research-based practices in transition from school to adult life.

The 2006 Summit is scheduled for April 2006 and this year's objectives will be to enhance local level, cross-disciplinary leadership teams' efforts to achieve post-school results for students with disabilities, to develop goals and action steps for local implementation of the Statewide Strategic Plan, and to identify technical assistance needs of Leadership Teams.[6]

Blue Ribbon Task Force (BRTF) on Inclusive Community Living, Transition, and Employment of Individuals with Disabilities

In 2004, the Governor issued Executive Order 04-62, establishing the Florida Blue Ribbon Task Force on Inclusive Community Living, Transition, and Employment of Persons with Developmental Disabilities. The BRTF was charged with evaluating systems, programs, projects, and activities to determine consistency with Federal law, including the Americans with Disabilities Act and the Developmental Disabilities Assistance Act, Individuals with Disabilities Education Act, No Child Left Behind, Rehabilitation Act of 1973, and Bill of Rights for People with Developmental Disabilities.[7] The Governor directed the BRTF to concentrate on implementing strategies that result in improved inclusive community living options, transition outcomes, and employment for people with developmental disabilities so that they may achieve full integration and inclusion in society, in a manner that is consistent with the strengths, resources, and capabilities of each individual.

The BRTF issued a final report in December 2004 with four key recommendations intended to "achieve a system that aligns resources and eliminates barriers to effective transition, integrated employment, and inclusive community living and addresses priority needs of people with developmental disabilities."[8] These recommendations included:

- Developing a cost effective, coordinated, comprehensive system of supports and services (accomplished through a BRTF working group).
- Developing a transition plan that ensures transition outcome measures, a statewide assessment system that measures year to year progress, an incentive system to reward schools for students achieving employment, and an enhanced data system.
- Allocation of a portion of federal Workforce Investment Act state set-aside funds for competitive, integrated employment.
- An increase in funding to expand the number of persons served by the Home and Community Based Services waiver, and the Family and Supported Living waiver administered by Agency for Persons with Disabilities.

[6] Florida Developmental Disabilities Council, Florida's Transition Plans Comparison Chart (DRAFT), February 9, 2006.
[7] Florida Blue Ribbon Task Force (BRTF) on Inclusive Community Living, Transition, and Employment of Persons with Developmental Disabilities, Final Report, December 15, 2004.
[8] Ibid, page 6.

The Blue Ribbon Task Force Implementation Working Group

The Blue Ribbon Task Force Implementation Working Group (BIWG) was established to support the planning and actions necessary to assure that the BRTF recommendations were achieved. In July 2005, Florida was selected as one of six states participating in the National Governors' Association (NGA) Policy Academy on Improving Outcomes for Young Adults with Disabilities. Most of the Core Team members of the NGA Policy Academy were also members of the BIWG. Each participating state is required to determine and develop the most effective strategies for itself, given its specific challenges and opportunities and will:

- develop clear goals and realistic strategies for making both tangible short-term progress and key first steps toward broader system change;
- design a governance structure that drives implementation of innovative strategies and ensures coordination across all relevant agencies;
- undertake service integration and coordination such as mapping delivery systems, integrating case management, coordinating funds, and implementing effective memoranda of understanding among agencies; and
- develop cross-system outcomes and performance measures for the targeted population, including strategic data collection and analysis techniques in order to determine what strategies are successful and where change is required.[9]

According to the FDDC, "[g]iven the similarities in the goals and focus of the two initiatives and need to maximize the efforts of the mutual serving member agencies and organizations, the NGA Policy Academy was merged with the BIWG initiative to focus the first phase of the BIWG implementation efforts on the transition related recommendations in the Blue Ribbon Task Force final report." The Core Team members, agencies and organizations on the BIWG have developed Implementation Plans for each agency and organization, establishing measures of success, objectives, action steps, responsible parties, timelines, and resources or partners needed for success.

Phase II of the BIWG/NGA initiative will address Inclusive Community Living recommendations, as well as other Phase I recommendations, with a continued focus on strengthening cross-agency collaborations among the domains of housing, transportation, health, assistive technology, education, employment, community integration, and consumer advocacy.

Creation of a Committee or Task Force

Section 20.03 (8), F.S., states that a "Committee" or "task force" refers to an advisory body created without specific statutory enactment for a time not to exceed one year, or created by specific statutory enactment for a time not to exceed three years, and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.

EFFECT OF PROPOSED CHANGES

The bill creates the Interagency Services Committee for Youth and Young Adults with Disabilities within the Agency for Persons with Disabilities. This committee is intended to establish goals to ensure successful transition to employment or further education of youth and young adults with disabilities, as well as to eliminate barriers that impede educational opportunities leading to future employment of these youths.

The bill requires that the committee consist of heads, or their designees, of the following agencies and bureaus or divisions of agencies:

[9] Florida Developmental Disabilities Council, Florida's Transition Plans Comparison Chart (DRAFT), February 9, 2006.

- The Department of Education and, in that department, the Bureau of Exceptional Education and Student Services, the Division of Vocational Rehabilitation, the Division of Blind Services, the Division of Community Colleges, workforce education, and the office of interagency programs.
- The Agency for Persons with Disabilities.
- The Agency for Health Care Administration.
- The Division of Children's Medical Services Network in the Department of Health.
- Children's mental health in the Department of Children and Family Services.
- The Department of Juvenile Justice.
- The Department of Corrections.
- The Commission for the Transportation Disadvantaged.
- The Florida Housing Finance Corporation.

The bill provides that agency representatives must be at least at the bureau chief level. The committee is required to invite representation from the following private and public parties:

- The Able Trust.
- The Business Leadership Network.
- The Florida Advocacy Center.
- The Governor's Americans with Disabilities Act Working Group.
- The Florida Association for Centers for Independent Living.
- An individual with a disability.
- A parent or guardian of an individual with a disability.

The bill requires members of the committee to designate one of its members as chairperson, and meetings and records of the committee are subject to s. 119.07 and s. 286.011, F.S., the open records and open meetings laws.

The bill requires that the Department of Children and Family Services, the Department of Education, the Department of Health, and the Agency for Persons with Disabilities provide staff support to the committee, and the chairperson is to designate one of the agencies to perform "administrative responsibilities" for the committee.

Committee members are to serve without compensation, but are entitled to reimbursement for travel and per diem, as provided in s. 112.061, F.S. Public officers and employees are to be reimbursed through the budget entity from which their salary is paid. Reimbursement for members who are not public officers or employees shall alternate between the budget entities represented on the committee.

The bill requires that the committee accomplish the following:

- Identify the roles and responsibilities of each agency with regard to the committee goals.
- Develop collaborative relationships to identify and assist in removing federal and state barriers to achieving goals.
- Identify common or comparable performance measures for all agencies that serve youth and young adults with disabilities.
- Design a mechanism to annually assess the progress toward the goals of each agency.
- Collect and disseminate information on research-based practices of state and local agencies on successful strategies.
- Develop strategies to educate public and private employers on the benefit of hiring persons with disabilities.
- Develop strategies to encourage each public employer to hire persons with disabilities.

- Recommend a statewide system of accountability which would include incentives for persons with disabilities; service providers, including school districts, technical centers, and community colleges; and businesses and industries providing integrated competitive employment to individuals with disabilities.

The committee must present a progress report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2007, must submit a final report on its findings and recommendations by January 1, 2008, and is abolished on June 1, 2008.

The bill has an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Creates the Interagency Services Committee for Persons with Disabilities with the Agency for Persons with Disabilities.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Costs will include travel and per diem expenses for committee members, administrative support costs, and staff time. Travel and per diem costs should be minimal unless the committee conducts meetings outside Tallahassee. Reimbursement for members who are not public officers or employees shall alternate between budget entities represented on the committee.

   Since the committee will select the chairperson who will then designate the agency to provide administrative support, the costs to each of the agencies named cannot be determined.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

At its March 22, 2006 meeting, the Committee on Elder and Long-Term Care adopted a strike-all amendment to House Bill 1623 with the following changes:

- Provides for the Interagency Services Committee for Youth and Young Adults with Disabilities to be created within the Agency for Persons with Disabilities.
- Revises committee composition, and directs the committee to invite representation from various private and public entities.
- Provides a reimbursement schedule for committee members who are not public officers or employees.
- Refines duties and responsibilities of the committee.
- Requires the committee to submit both a progress report to the Governor, the President of the Senate, and the Speaker of the House by March 1, 2007, and a final report detailing committee findings and recommendations by January 1, 2008.
- Pushes back the date upon which the committee is abolished by one year to June 1, 2008.

A committee substitute was favorably reported, and this analysis is drafted to the committee substitute.

CHAMBER ACTION

The Elder & Long-Term Care Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to youth and young adults with disabilities; creating the Interagency Services Committee for Youth and Young Adults with Disabilities within the Agency for Persons with Disabilities; providing legislative intent; providing for membership, duties, and responsibilities; requiring specified member agencies to provide staff support for the committee; providing for reimbursement of certain expenses; providing that the committee is subject to open records and open meetings requirements; requiring the committee to submit a report to the Governor and Legislature; providing for termination of the committee; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Interagency Services Committee for Youth and Young Adults with Disabilities.--

(1) There is created within the Agency for Persons with Disabilities the Interagency Services Committee for Youth and Young Adults with Disabilities. It is the intent of the Legislature that the committee establish goals to ensure successful transition to employment or further education of youth and young adults with disabilities and to eliminate barriers that impede educational opportunities leading to future employment.

(2)(a) The committee shall consist of heads, or their designees, of the following agencies and bureaus or divisions of agencies: the Department of Education and, in that department, the Bureau of Exceptional Education and Student Services, the Division of Vocational Rehabilitation, the Division of Blind Services, the Division of Community Colleges, the Office of Workforce Education, and the Office of Interagency Programs; the Agency for Persons with Disabilities; the Agency for Health Care Administration; the Division of Children's Medical Services Network in the Department of Health; the Children's Mental Health Program in the Department of Children and Family Services; the Department of Juvenile Justice; the Department of Corrections; the Commission for the Transportation Disadvantaged; and the Florida Housing Finance Corporation. Agency representatives must be at least at the bureau chief level. The committee shall invite representation from the following private and public parties: the Able Trust; the Business Leadership Network; the Advocacy Center for Persons with Disabilities; the Governor's Working Group on the Americans with Disabilities Act; the Florida Association of Centers for

Independent Living; an individual with a disability; and a parent or guardian of an individual with a disability. The members of the committee shall designate one member as the chairperson.

(b) The Department of Children and Family Services, the Department of Education, the Department of Health, and the Agency for Persons with Disabilities shall provide staff support to the committee. The chairperson may designate one of the agencies providing staff support to perform administrative responsibilities for the committee.

(c) Committee members shall serve without compensation but are entitled to reimbursement for expenses incurred in carrying out their duties as provided in s. 112.061, Florida Statutes. Members who are public officers or employees shall be reimbursed by the budget entity through which they are compensated. Reimbursement for members who are not public officers or employees shall alternate between the budget entities represented on the committee.

(d) The meetings and records of the committee are subject to ss. 119.07 and 286.011, Florida Statutes, and s. 24, Art. I of the State Constitution.

(3) The committee shall:

(a) Identify the roles and responsibilities of each agency with regard to the committee goals.

(b) Develop collaborative relationships to identify and assist in removing federal and state barriers to achieving the goals.

(c) Identify common or comparable performance measures for all agencies that serve youth and young adults with disabilities.

(d) Design a mechanism to annually assess the progress toward the goals by each agency.

(e) Collect and disseminate information on the research-based practices and successful strategies of state and local agencies.

(f) Develop strategies to educate public and private employers on the benefit of hiring persons with disabilities.

(g) Develop strategies to encourage public employers to hire persons with disabilities.

(h) Recommend a statewide system of accountability that includes incentives for persons with disabilities; service providers, including school districts, technical centers, and community colleges; and businesses and industries providing integrated competitive employment to individuals with disabilities.

(4) The committee shall submit a report of its progress to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2007, and submit a final report on its findings and recommendations by January 1, 2008. The committee is abolished on June 1, 2008.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7109 PCB FT 06-04 Property Taxation
SPONSOR(S): Finance & Tax Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee	9 Y, 0 N	Monroe	Diez-Arguelles
1) Growth Management Committee	8 Y, 0 N	Strickland	Grayson
2) Fiscal Council		Monroe KDSM	Kelly CK
3)			
4)			
5)			

SUMMARY ANALYSIS

Current law limits the increase in assessed value of homesteaded property. Changes, additions, and improvements to such property are assessed at full just value. However, if a homestead property is destroyed by misfortune or calamity, the property may be repaired or replaced without being assessed at full just value, provided that the just value of property as repaired or replaced does not exceed 125 percent of the just value before the destruction.

The bill amends s. 193.155(4), F.S., to provide that changes, additions, or improvements to damaged or destroyed homestead property shall not increase the assessed value if:

- the square footage of a homestead is increased by 10 percent or less, or
- the square footage of the house as rebuilt or repaired does not exceed 1500 square feet.

The bill also amends s. 196.031, F.S., to specifically provide that under the following conditions damaged or destroyed homestead property shall retain its homestead status, when the property is uninhabitable on January 1:

- the property otherwise qualifies as homestead property,
- the owner notifies the property appraiser that he or she intends to repair or rebuild the property and make it his or her primary residence once it is rebuilt, and
- the owner does not claim a homestead exemption on any other property or otherwise violate the provisions of s. 196.031, F.S.

The Revenue Estimating Conference has estimated that this bill will reduce local revenues by $3.8 million on an annual basis, assuming no change in millage rates. The bill will have no effect upon General Revenue.

This bill will take effect upon becoming law and apply retroactively to January 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes -This bill will change how property appraisers determine if homestead property should be reassessed upon being rebuilt after being damaged or destroyed by misfortune. As such, it will cause a shift in the property tax burden resulting in lower taxes for some persons.

B. EFFECT OF PROPOSED CHANGES:

Background:

Article VII, s. 4 of the State Constitution requires that all property be assessed at its just market value for ad valorem tax purposes. Just value has been interpreted to mean fair market value.

Article VII s. 4(c) of the State Constitution, provides for a homestead property assessment increase limitation. This provision is commonly known as "Save our Homes". The annual increase in a homestead property's assessed value is limited to 3 percent or the Consumer Price Index percentage change, whichever is lower, not to exceed just value. If there is a change in ownership, the property must be assessed at its just value on the following January 1. The value of changes, additions, or improvements to the homestead property is assessed as provided by general law. Section 193.155, F.S., implements this assessment limitation.

Section 193.155(4), F.S., provides that changes, additions, or improvements to homestead property are assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed. However, paragraph (b) of s. 193.155(4), F.S., stipulates that changes, additions, or improvements do not include replacement of a portion of real property damaged or destroyed by misfortune or calamity when the just value of the damaged or destroyed portion as replaced has a just value that is not more than 125 percent of the previous just value of the damaged or destroyed portion. The value of any replaced real property or portion thereof which is in excess of 125 percent of the just value of the damaged or destroyed property is deemed to be a change, addition, or improvement and subject to assessment.

Proposed Changes:

The bill amends s. 193.155(4), F.S., to provide that changes, additions, or improvements to damaged or destroyed homestead property shall not increase the assessed value if:

- the square footage of a homestead is increased by 10 percent or less, or
- the square footage of the house as rebuilt or repaired does not exceed 1500 square feet.

The bill also amends s. 196.031, F.S., to specifically provide that under the following conditions damaged or destroyed homestead property shall retain its homestead status, when the property is uninhabitable on January 1:

- the property otherwise qualifies as homestead property,
- the owner notifies the property appraiser that he or she intends to repair or rebuild the property and make it his or her primary residence once it is rebuilt, and
- the owner does not claim a homestead exemption on any other property or otherwise violate the provisions of s. 196.031, F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 193.155(4), F.S., to change the criteria under which the repair or replacement of property destroyed by a calamity will not trigger a reassessment under Save our Homes.

Section 2 amends s. 196.031, F.S., to specifically provide that a homestead destroyed by misfortune or calamity shall not lose its homestead status under certain conditions, even if the home is not inhabitable on January 1.

Section 3 provides that the bill shall take effect upon becoming law and apply retroactively to January 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference has estimated that the bill reduces local revenues by $3.8 million on an annualized basis, assuming no change in millage rates by local governments.

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may reduce the assessed value of some property that replaces homestead property damaged or destroyed by misfortune or calamity, if the repairs or replacements fall within the bill's square footage thresholds but would have exceeded the current-law threshold of 125 percent of just value.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill reduces the authority that cities or counties have to raise ad valorem tax revenues in the aggregate. As such, the mandates provision would appear to apply. However, since the bill is implementing a constitutional provision, it can be argued that the mandates provision does not affect this bill. Nevertheless, it is recommended that the bill be passed by a two-thirds margin to avoid any possible constitutional issues.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to homestead property assessments; amending s. 193.155, F.S.; revising exceptions applicable to damaged or destroyed homestead property to a requirement that changes, additions, or improvements to homestead property be assessed at just value under certain circumstances; providing for assessment of changed or improved homestead property; amending s. 196.031,F.S.; providing for the continued granting of a homestead exemption for certain damaged or destroyed homestead property under certain circumstances; providing for retroactive application; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.--Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption.

(4)(a) Except as provided in paragraph (b), changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

(b) Changes, additions, or improvements that replace all or ~~do not include replacement of~~ a portion of homestead ~~real~~

property damaged or destroyed by misfortune or calamity shall not increase the homestead property's assessed value when the square footage of the homestead property as changed or improved does not exceed 110 percent of the square footage of the homestead property before the damage or destruction ~~just value of the damaged or destroyed portion as replaced is not more than 125 percent of the just value of the damaged or destroyed portion~~. Additionally, the homestead property's assessed value shall not increase if the total square footage of the homestead property as changed or improved does not exceed 1,500 square feet. Changes, additions, or improvements that do not cause the total to exceed 110 percent of the total square footage of the homestead property before the damage or destruction or that do not cause the total to exceed 1,500 total square feet shall be reassessed as provided under subsection (1). The homestead property's assessed value shall be increased by the just value of that portion of the changed or improved homestead property ~~any replaced real property, or portion thereof,~~ which is in excess of 110 ~~125~~ percent of the square footage of the homestead property before the damage or destruction or of that portion exceeding 1,500 square feet ~~just value of the damaged or destroyed property shall be deemed to be a change, addition, or improvement~~. Homestead ~~Replaced real~~ property damaged or destroyed by misfortune or calamity which, after being changed or improved, has a square footage ~~with a just value~~ of less than 100 percent of the homestead ~~original~~ property's total square footage before the damage or destruction ~~just value~~ shall be assessed pursuant to subsection (5). For purposes of determining

assessed value pursuant to this paragraph, the just value of the changed or improved portion in excess of 110 percent of the square footage of the homestead property before the damage or destruction, or that portion exceeding 1,500 square feet, shall be determined based on the average just value of all square footage in the improved portions of the homestead property determined as of January 1 of the year following the change or improvement.

(c) Changes, additions, or improvements include improvements made to common areas or other improvements made to property other than to the homestead property by the owner or by an owner association, which improvements directly benefit the homestead property. Such changes, additions, or improvements shall be assessed at just value, and the just value shall be apportioned among the parcels benefiting from the improvement.

Section 2. Subsection (7) is added to section 196.031, Florida Statutes, to read:

196.031 Exemption of homesteads.--

(7) When homestead property is damaged or destroyed by misfortune or calamity and the property is uninhabitable on January 1 after the damage or destruction occurs, the homestead exemption may be granted if the property is otherwise qualified and if the property owner notifies the property appraiser that he or she intends to repair or rebuild the property and live in the property as his or her primary residence after the property is repaired or rebuilt and does not claim a homestead exemption on any other property or otherwise violate this section.

Section 3. This act shall take effect upon becoming a law and shall apply retroactively to January 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7129 PCB ENVR 06-04 Dept. of Interior Constitutional Amendment
SPONSOR(S): Environmental Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Environmental Regulation Committee	6 Y, 0 N	Kliner	Kliner
1) Fiscal Council		Dixon/Darity	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill would authorize a proposed constitutional amendment for consideration by voters in the 2006 General Election to create a Department of the Interior, to be headed by an elected Cabinet officer who shall have supervision of matters pertaining to the state's natural resources, including fish and wildlife. If approved:

- Effective July 1, 2009, the Department of the Interior shall be created. On that date the constitutional mandate establishing the Fish and Wildlife Conservation Commission and its duties shall be removed from the Florida Constitution. The Department of the Interior shall be responsible, as provided by law, for conserving and protecting the natural resources and scenic beauty of the state in accordance with Article II, section 7(a) of the State Constitution, including supervision of fish and wildlife.
- The office of director of the interior shall take effect January 6, 2009.
- The office would be initially filled for a 2-year term at the 2008 General Election, with 4-year terms following thereafter.

Art. XI, s. 5, of the Florida Constitution, requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the General Election. The Division of Elections estimates that the cost of compliance would be approximately $50,000.

Since the specific responsibilities and organization of the Department of Interior would be determined by general law, the fiscal impact of the creation of the department is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The proposed constitutional amendment does not appear to implicate any of the House Principles; however, if the constitutional amendment passes the Legislature will begin to create an umbrella agency to oversee issues relating to natural resources, including fish and wildlife. Depending on how the Legislature structures the agency, this measure may decrease public employment by possibly eliminating duplicative services or combining certain disciplines relating to natural resource conservation and management.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Currently, two governmental entities exercise primary supervision over matters pertaining to Florida's natural resources. [1]

- The Department of Environmental Protection (DEP) is an executive agency overseen by a governor-appointed Secretary. The DEP is primarily responsible for managing and regulating activities that impact Florida's land, air and water quality.
- The Fish and Wildlife Conservation Commission (FWC) is a constitutionally-created body managed by a Commission of seven members that are appointed by the Governor and confirmed by the Florida Senate to five-year terms. The FWC is responsible for managing and regulating activities that impact Florida's marine and freshwater animals and terrestrial wildlife.

Both agencies perform functions relating to land management, construction permitting, pollution control, and law enforcement. In addition, both FWC and DEP have land acquisition programs and each develops recreational trails.

Short History of Conservation in Florida

Between 1845 and 1889 the enforcement responsibility for fishing and conservation fell to each of the individual counties, towns or municipalities. The Florida Fish Commission was established in 1889, and Fish Wardens were appointed by state commissioners to enforce Florida fish laws. Between 1905 and 1913 enforcement was returned to the individual counties. During that time, Fish and Game Wardens were authorized for appointment for each county, enforced ordinances relating to fish, oyster and game, and were compensated by the county government.

In 1913, the first state wildlife conservation agency, Game and Fish, was created. That same year a revised game law established state ownership of wild birds and game and set up small county and state resident hunting license fees. The 1915 Legislature abolished the State Department of Game and Fish, and gave ownership of game and birds to the county in which that wildlife was found, and authorized employment of county game wardens by county commissions. A portion of these laws were held to be unconstitutional and the 1917 Legislature corrected itself, giving ownership of game, birds and fish back to the state.[2]

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[1] The Department of Agriculture and Consumer Services, which is administered by an elected Cabinet officer oversees the state's agricultural resources.

[2] Florida Game and Freshwater Commission. Florida Wildlife, V. 47 Number 6 50th Anniversary Edition. Tallahassee, FL: Florida Game and Freshwater Commission, Nov-Dec. 1993. p. 8

The 1925 Legislature established a State Department of Game and Fresh Water Fish, making Florida the 46th state to create a state conservation agency. The 1927 rewrite of the statute provided for an appointment of a Wildlife Conservation Commission, made up of one person from each congressional district and one at-large member who would advise and assist the Commission. The newly organized agency had the power to acquire lands as well, which assisted the agency to create breeding grounds through the selective closing of private lands.[3]

In 1933 the Legislature abolished the State Department of Game and Fish and assigned its duties to a new State Board of Conservation, a body that absorbed the Shell Fish Commission and the Geology Board. The State Board of Conservation lasted for two years. In 1935 the Legislature reorganized the State Board of Conservation into two departments: the State Conservation Department and the State Department of Game and Fresh Water Fish. In 1937 the Legislature allowed the Commission to establish cooperative agreements with eth U.S. Forest service and the State Forest and Park Service to promote conservation on lands administered by these agencies. The Legislature continued to pass game and fish laws, some opposed by the Commission. In 1937 and 1939, there were two failed attempts to amend the state constitution to establish as a constitutional body, an independent Game and Fish Commission.[4]

In 1942 Florida voters approved a constitutional amendment to create a Commission of five members who would serve without pay. This Commission could only be abolished by constitutional amendment. It was empowered to set bag limits, fix open and closed seasons on a statewide, regional or local basis, and to regulate the manner and method of taking, transporting, stocking and otherwise using birds, game, freshwater fish, reptiles and amphibians.

In 1952 Florida Governor Fuller Warren proposed a new Department of the Interior made up of the Game and Fresh Water Fish Commission and the State Board of Conservation. In 1953, newly elected Governor Daniel McCarty decided to merge the Game and Fresh Water Fish Commission with the State Board of Conservation to form a Department of Interior headed by a an elected cabinet official.[5] This was a continuation of the work Governor McCarty's predecessor Governor Fuller Warren started in 1952, when the members of the Legislature felt that the Commission was "superior" to the Senate and House because its regulations had the power of law without legislative approval or the governor's signature.[6] However, the work that Governor Warren had started and Governor McCarty was continuing never came to pass due to Governor McCarty's death less than nine months after taking office prevented implementation of this plan.[7]

In 1968 the Legislature provided for a new Department of Natural Resources (DNR), which took over many conservation functions and projects throughout the state, and which worked closely with the Commission. The Department of Environmental Regulation (DER) was created in 1975. While DNR primarily concentrated on issues relating to the acquisition and management of state lands (submerged lands and uplands) and reported to the Cabinet, the DER had the regulatory authority to control the discharge of pollutants to the environment and the destruction of wetlands by dredging and filling and reported to the Governor.[8] In 1993 the Department of Environmental Protection (DEP) was established from the merger of the Departments of Natural Resources and Environmental Regulation.

On November 3, 1998, Revision 5 to the Florida Constitution amended Article IV, Section 9 and created Article XII, Section 23 (1998 Revision) for the purpose of creating the FWC. The move consolidated the regulation of wild animal life, freshwater aquatic life, and marine life in one agency. In doing so, the Game Commission and Marine Commission were abolished and the jurisdiction of both entities was transferred to the FWC.

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[3] Ibid. pp 10, 11
[4] Ibid. p. 15
[5] Ibid. p. 28
[6] Ibid. p. 22
[7] Ibid. p. 28
[8] Ibid. pp 22, 23

Prior to 1999, regulation of Florida's wild animal life, freshwater aquatic life, and marine life was performed primarily by three governmental entities:

1) The Florida Game and Fresh Water Fish Commission (Game Commission), a constitutional entity with exclusive regulatory and executive authority over wild animal life and freshwater aquatic life.
2) The Marine Fisheries Commission (Marine Commission), a statutory entity placed within the DEP with limited jurisdiction over the management of marine life.
3) The DEP, a statutory agency with authority over some aspects of marine life and full authority over marine law enforcement.

C. SECTION DIRECTORY:

This bill would authorize a proposed constitutional amendment for consideration by voters in the 2006 General Election to create a Department of Interior, to be headed by an elected Cabinet officer who shall have supervision of matters pertaining to the state's natural resources. Upon voter approval it would leave the regulation of fish and wildlife, natural resources, and the scenic beauty of the state to be determined by the Legislature. The constitutional amendment language would read as follows:

CONSTITUTIONAL AMENDMENT
ARTICLE IV, SECTIONS 4 AND 9;
ARTICLE XII, SECTIONS 23 AND 26
DIRECTOR OF THE INTERIOR, DEPARTMENT OF THE INTERIOR CREATED; FISH AND WILDLIFE CONSERVATION COMMISSION ABOLISHED.-- Proposing an amendment of the State Constitution to create a Cabinet-level Department of the Interior to exercise the regulatory and executive powers of the state regarding all matters, except as otherwise provided by law, relating to fish and wildlife, natural resources, and the scenic beauty of the state; and for the creation of the Commissioner of the Interior, a Cabinet officer selected by statewide election to oversee all matters relating to the department and to serve with the Governor and other Cabinet officers as the State Board of Administration, as Trustees of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund, and as the agency head of the Department of Law Enforcement; and to remove the constitutional mandate of the Fish and Wildlife Conservation Commission previously charged with overseeing matters relating to fish and wildlife; and to preserve the prohibition of any special law or general law of local application relating to hunting and fishing; and to provide an effective date of July 1, 2009, for the creation of the Department of the Interior and an effective date of January 6, 2009 for the creation of the Cabinet office of Commissioner of the Interior, with the office to be filled at the 2008 general election to an initial term of 2 years, with subsequent 4-year terms.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Art. XI, s. 5, of the Florida Constitution, requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. The Division of Elections estimates that the cost of compliance would be approximately $50,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This joint resolution proposes a constitutional amendment which, if approved by the voters, would create an agency with certain responsibilities to be established by general law. As such, the fiscal impact of the creation of the Department of the Interior is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The Mandates Provision is not applicable to proposed amendments to the state constitution.

2. Other:

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution.[9] The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by a majority of the electors voting on the question, the proposed amendment becomes effective on the Tuesday after the first Monday in January following the election or on such other date as may be specified in the amendment.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In the United States, 26 States have chosen to place the state's game and fish regulation and environmental regulation within a subdivision of an "umbrella" agency:

> Alabama, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas (Cabinet level agency), Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, Nebraska, New Jersey, New York, Ohio, Rhode Island, South Carolina, South Dakota, Texas, Utah, Wisconsin, and West Virginia.

There are 20 states where game and fish regulation are within a stand alone agency:

[9] See Art. XI, Fla. Const. (providing for amendment by legislative joint resolution, constitution revision commission proposal, citizen initiative, and constitutional budget or tax commission proposal).

Alaska, Arizona, Colorado, Idaho, Kentucky, Louisiana, Maine, Massachusetts, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, Tennessee, Virginia, Vermont, Washington, and Wyoming.

Four states have game and fish agencies that are constitutionally created:

Arkansas, California, Florida, and Oklahoma.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

House Joint Resolution

A joint resolution proposing the amendment of Section 11 of Article III, Sections 4 and 9 of Article IV, and Section 23 of Article XII and the creation of Section 26 of Article XII of the State Constitution to create the Cabinet office of Commissioner of the Interior, create a Department of the Interior, and remove the constitutional mandate for a Fish and Wildlife Conservation Commission.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment of Section 11 of Article III, Sections 4 and 9 of Article IV, and Section 23 of Article XII and the creation of Section 26 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE III

LEGISLATURE

SECTION 11. Prohibited special laws.--

(a) There shall be no special law or general law of local application pertaining to:

(1) election, jurisdiction or duties of officers, except officers of municipalities, chartered counties, special districts or local governmental agencies;

(2) assessment or collection of taxes for state or county purposes, including extension of time therefor, relief of tax

officers from due performance of their duties, and relief of their sureties from liability;

(3) rules of evidence in any court;

(4) punishment for crime;

(5) petit juries, including compensation of jurors, except establishment of jury commissions;

(6) change of civil or criminal venue;

(7) conditions precedent to bringing any civil or criminal proceedings, or limitations of time therefor;

(8) refund of money legally paid or remission of fines, penalties or forfeitures;

(9) creation, enforcement, extension or impairment of liens based on private contracts, or fixing of interest rates on private contracts;

(10) disposal of public property, including any interest therein, for private purposes;

(11) vacation of roads;

(12) private incorporation or grant of privilege to a private corporation;

(13) effectuation of invalid deeds, wills or other instruments, or change in the law of descent;

(14) change of name of any person;

(15) divorce;

(16) legitimation or adoption of persons;

(17) relief of minors from legal disabilities;

(18) transfer of any property interest of persons under legal disabilities or of estates of decedents;

(19) hunting or ~~fresh water~~ fishing;

(20) regulation of occupations which are regulated by a state agency; or

(21) any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.

(b) In the enactment of general laws on other subjects, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.

ARTICLE IV

EXECUTIVE

SECTION 4. Cabinet.--

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, a commissioner of the interior, and a commissioner of agriculture. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.

(b) The attorney general shall be the chief state legal officer. There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law. The statewide prosecutor shall be appointed by the attorney

general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law.

(c) The chief financial officer shall serve as the chief fiscal officer of the state, and shall settle and approve accounts against the state, and shall keep all state funds and securities.

(d) The commissioner of agriculture shall have supervision of matters pertaining to agriculture except as otherwise provided by law.

(e) The commissioner of the interior shall have supervision of matters pertaining to the state's natural resources and scenic beauty, including fish and wildlife, except as otherwise provided by law.

(f) ~~(e)~~ The governor as chair, the chief financial officer, and the attorney general shall constitute the state board of administration, which shall succeed to all the power, control, and authority of the state board of administration established pursuant to Article IX, Section 16 of the Constitution of 1885, and which shall continue as a body at least for the life of Article XII, Section 9(c).

(g) ~~(f)~~ The governor as chair, the chief financial officer, the attorney general, the commissioner of the interior, and the commissioner of agriculture shall constitute the trustees of the internal improvement trust fund and the land acquisition trust fund as provided by law.

(h) ~~(g)~~ The governor as chair, the chief financial officer, the attorney general, the commissioner of the interior, and the

commissioner of agriculture shall constitute the agency head of the Department of Law Enforcement.

SECTION 9. Department of the Interior ~~Fish and wildlife conservation commission~~.--There shall be a Department of the Interior to be responsible for conserving and protecting the state's natural resources and scenic beauty, including fish and wildlife, except as otherwise provided by law ~~fish and wildlife conservation commission, composed of seven members appointed by the governor, subject to confirmation by the senate for staggered terms of five years. The commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, and shall also exercise regulatory and executive powers of the state with respect to marine life, except that all license fees for taking wild animal life, fresh water aquatic life, and marine life and penalties for violating regulations of the commission shall be prescribed by general law. The commission shall establish procedures to ensure adequate due process in the exercise of its regulatory and executive functions. The legislature may enact laws in aid of the commission, not inconsistent with this section, except that there shall be no special law or general law of local application pertaining to hunting or fishing. The commission's exercise of executive powers in the area of planning, budgeting, personnel management, and purchasing shall be as provided by law. Revenue derived from license fees for the taking of wild animal life and fresh water aquatic life shall be appropriated to the commission by the legislature for the purposes of management, protection, and conservation of wild~~

~~animal life and fresh water aquatic life. Revenue derived from license fees relating to marine life shall be appropriated by the legislature for the purposes of management, protection, and conservation of marine life as provided by law. The commission shall not be a unit of any other state agency and shall have its own staff, which includes management, research, and enforcement. Unless provided by general law, the commission shall have no authority to regulate matters relating to air and water pollution~~.

ARTICLE XII

SCHEDULE

SECTION 23. Department of the Interior ~~Fish and wildlife conservation commission~~.--

~~(a) The initial members of the commission shall be the members of the game and fresh water fish commission and the marine fisheries commission who are serving on those commissions on the effective date of this amendment, who may serve the remainder of their respective terms. New appointments to the commission shall not be made until the retirement, resignation, removal, or expiration of the terms of the initial members results in fewer than seven members remaining.~~

~~(b) The jurisdiction of the marine fisheries commission as set forth in statutes in effect on March 1, 1998, shall be transferred to the fish and wildlife conservation commission. The jurisdiction of the marine fisheries commission transferred to the commission shall not be expanded except as provided by general law. All rules of the marine fisheries commission and game and fresh water fish commission in effect on the effective~~

~~date of this amendment shall become rules of the fish and wildlife conservation commission until superseded or amended by the commission.~~

~~(c)~~ The creation of the Department of the Interior pursuant to the amendment to Section 9 of Article IV shall take effect July 1, 2009, and on that ~~the effective~~ date ~~of this amendment~~, the constitutional mandate for a fish and wildlife conservation ~~marine fisheries commission and game and fresh water fish~~ commission shall be removed ~~abolished~~.

~~(d) This amendment shall take effect July 1, 1999.~~

SECTION 26. Commissioner of the Interior.--The amendment to Section 4 of Article IV to create the Cabinet office of commissioner of the interior shall take effect January 6, 2009, with the office to be initially filled for a 2-year term at the 2008 general election.

CONSTITUTIONAL AMENDMENT

ARTICLE III, SECTION 11

ARTICLE IV, SECTIONS 4 AND 9

ARTICLE XII, SECTIONS 23 AND 26

CONSERVATION AND PROTECTION OF NATURAL RESOURCES AND SCENIC BEAUTY, INCLUDING FISH AND WILDLIFE.--Proposing amendment of the State Constitution to create a Department of the Interior to be responsible for conserving and protecting the state's natural resources and scenic beauty, including fish and wildlife, except as otherwise provided by law; to create the office of Commissioner of the Interior, a Cabinet office filled by statewide election, to have supervision of matters pertaining to the state's natural resources and scenic beauty, including fish

and wildlife, except as otherwise provided by law, and to serve with the Governor and other Cabinet officers as the State Board of Administration, as Trustees of the Internal Improvement Trust Fund and the Land Acquisition Trust Fund, and as the agency head of the Department of Law Enforcement; to remove the constitutional mandate for a Fish and Wildlife Conservation Commission charged with overseeing matters relating to fish and wildlife; to preserve the prohibition against any special law or general law of local application relating to hunting or fishing; and to provide an effective date of July 1, 2009, for the creation of the Department of the Interior and an effective date of January 6, 2009, for the creation of the Cabinet office of Commissioner of the Interior, with the office to be filled at the 2008 general election to an initial term of 2 years, with subsequent 4-year terms.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7173 (PCB FFF 06-01) Welfare of Children
SPONSOR(S): Future of Florida's Families Committee and Rep. Galvano
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 2470, HB 1607, SB 1798

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee	7 Y, 0 N	Davis/Preston/Halperin	Collins
1) Fiscal Council		Ekholm LE	Kelly CK
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill establishes a centralized office to examine, oversee, and implement abuse prevention services by creating the Office of Child Abuse Prevention within the Executive Office of the Governor.

Creating an Office of Child Abuse Prevention is viewed as untangling the fragmented web of services to bring a more efficient, streamlined and accessible array of services to the families of the State of Florida. That is, layers should be removed, communication networks should be developed, prevention management should increase, and accountability should be created. A centralized prevention office will lay the foundation for success in accessing prevention services for years to come.

The bill also addresses the welfare of young adults aging out of the foster care system by expanding the eligibility pool, requiring the development of a plan for each community-base care (CBC) service area, providing for the direct deposit of funds, authorizing CBCs to purchase housing and other services, and providing for the expansion of Kidcare coverage for eligible young adults until age 20.

The bill makes public school employees subject to the reporting requirements of chapter 39, F.S., for purposes of making reports of alleged abuse to the central abuse hotline.

Because of an exemption from regulation by both the Department of Children and Family Services and the Department of Education, the bill requires boarding schools to be accredited.

Finally, the ability of Statewide and Local Advocacy Councils ("SAC") to monitor, investigate, and resolve claims of abuse and neglect is strengthened. The intent of the Legislature is restated to have citizen volunteers as members of the SAC "to discover, monitor, investigate, and determine the presence of conditions or individuals that constitute a threat to the rights, health, safety, or welfare of persons who receive services from state agencies."

The fiscal impact to the state is significant—$18,427,790 in recurring and $165,155 in nonrecurring general revenue funds.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government—The bill creates the Office of Child Abuse Prevention (Office) for the purpose of establishing a comprehensive statewide approach for the prevention of child abuse, abandonment, and neglect. The bill also expands Medicaid eligibility for certain young adults until age 20.

Safeguard Individual Liberty—If the Statewide Advocacy Council were designated as a health oversight agency, it would be entitled to obtain confidential client records without client consent.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION:

In 1982, the Legislature required the Department of Health and Rehabilitative Services along with other state and local agencies to develop a state plan on the prevention of child abuse and neglect (chapter 82-62, Laws of Florida). The act required the plan to be submitted to the Legislature and Governor by January 1, 1983 and to be updated periodically. It was reported in 1982 that, "The impact that abuse and neglect has on the victimized child, siblings, family structure, and inevitably on all citizens of the state has caused the Legislature to determine that the prevention of child abuse and neglect shall be a priority of this state." Twenty-four years later, the Legislature is still seeking to address and identify ways to reduce incidence of abuse and neglect of children in Florida.

In 2002, Florida was among only three other states and the District of Columbia in having the highest national child maltreatment rate.[1] During the same year, 142,547 investigations of abuse or neglect, involving 254,856 children, were completed. Approximately one-half of the investigations were substantiated or indicated the presence of abuse or neglect. In FY 2003-04, there were reportedly 32.3 victims of maltreatment per 1,000 children in Florida. At that time, the re-abuse and re-neglect rate in Florida was 9.67%, which is higher than state and federal standards of 7% and 6.1%, respectively. These rates are based on maltreatment recurrence within six (6) months.

There were over 130,000 confirmed victims of child abuse and neglect in Florida in 2003. The actual incidence of child abuse and neglect is estimated to be 3 times that number.[2] Child deaths are the most tragic consequences of abuse and neglect. Child neglect deaths are more frequent than abuse deaths as 52% of child deaths that occur are through neglect.

A Florida child is abused or neglected every 4 minutes.[3] Ten thousand Florida children are abused or neglected per month. During 2004, according to the Florida Child Abuse Death Review Team, at least 111 Florida children died from abuse or neglect at the hands of their parents or caretakers; that is a rate of about two children dying each week. They were smothered, slammed down on asphalt, beaten, shot or they drowned while unsupervised.

The cost of child maltreatment to society is tremendous. National estimates of direct and indirect impacts range from $67 to $94 billion each year, and many argue that these estimates are likely to understate the true costs due to the difficulty in capturing the full range of indirect costs such as cash

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[1] U.S. Department of Health and Human Services, 2004. Florida rate was 31.5 per 1,000 children.

[2] "Child Welfare Annual Statistics Data Tables Fiscal Year 2004-2005." http://www.fiu.edu/~cat/fl_victims.htm. Author, Dr. Maureen Kenny, is currently an Associate Professor at Florida International University's College of Education.

[3] "Child Welfare Annual Statistics Data Tables Fiscal Year 2004-2005." http://www.fiu.edu/~cat/fl_victims.htm. Author, Dr. Maureen Kenny, is currently an Associate Professor at Florida International University's College of Education.

and food assistance.[4] Prevention can save lives and precious resources. Despite the potential long-term benefit of preventing child abuse and neglect, only a small percentage of all resources specifically earmarked for child maltreatment in the State of Florida are actually devoted to prevention.[5]

In a study of primary prevention efforts in Florida, researchers found federal and state sources funded $1,360 per year, per child under age five, on primary prevention programs and concluded that Florida's investments in primary prevention programs for young children were at levels insufficient to significantly reduce expenditures on deep-end services. The costs of foregoing prevention include lost productivity, wasted human potential, and reduced quality of life associated with escalation of preventable conditions to chronic, debilitating, and destructive states.[6] The challenges of funding restraints and the requirement to address the immediate, critical needs of maltreated children limit the Legislature's ability to focus on primary prevention oriented efforts. Prevention works best when there are strong connections between state and local government, prevention providers, and community organizations. In order to ensure the well being and success of Florida's children and families, prevention must become a priority for the state's citizens and leaders.

Many programs for children and families continue to focus on "fixing" problems rather than preventing them. Quick fixes are preferred, often for budgetary reasons, and prevention efforts typically require more extensive and comprehensive investments.[7]

There are some notable exceptions to this trend. The Florida Legislature created Healthy Families Florida (HFF) in July 1998 in response to the increasing number of child deaths due to child maltreatment and the increasing rates of maltreatment. Healthy Families Florida, Inc., is a nationally credentialed community-based, voluntary home visiting program designed to enable families to raise healthy, safe and nurtured children. Healthy Families Florida participants had 20 percent less child maltreatment than all families in their target service areas, showing that children in families who completed or had long-term, intensive HFF intervention experienced significantly less child maltreatment than did comparison groups with little or no service.[8]

In 1998, the Legislature appropriated $10 million to HFF to establish the state and local operating infrastructures and to fund 24 community-based programs to begin operations in targeted areas within 26 counties. In FY 1999-2000, the Legislature more than doubled the base funding to $22.2 million, which funded 36 projects serving 43 counties. In FY 2003-2004, the base funding was increased to $28.3 million to expand two projects and create one new project serving four new counties for a total of 38 projects serving parts or all of 53 of Florida's 67 counties. By FY 2003-2004, communities were contributing $9.7 million per year in local in-kind or cash contributions. The 2005-06 General Appropriations Act includes $28.4 million for the HFF program and provides a total funding of $44 million for "Child Abuse Prevention and Intervention" within the Department of Children and Families -- that represents less than 2% of the department's budget.

Healthy Families Florida is one example of a program which has had a positive impact on preventing child maltreatment for the population it serves. There are hundreds of prevention programs statewide funded with local, state, and/or federal dollars; however, due to a lack of data, it is unknown how effective many of these programs are in reducing incidence of abuse, neglect, abandonment, and death of children.

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[4] Fromm, S. (2001). *Total estimated cost of child abuse and neglect in the United States.* Chicago, IL: Prevent Child Abuse America.
[5] Thomas, D., Leicht, C., Hughes, C., Madigan, A., & Dowell, K. (2003). *Emerging practices in the prevention of child abuse and neglect.* www.dhhs.gov. Washington, D.C.: U.S. Department of Health and Human Services.
[6] Feaver, E. & Strickland, L. (2003). The Lawton Chiles Foundation Whole Child Project prevention policy paper. Tallahassee, FL: The Chiles Center.
[7] Lind, C. (2004). *Developing and supporting a continuum of child welfare services,* Welfare Information Network, 8 (6). www.financeprojectinfo.org/win/. Washington, D.C.: The Finance Project.
[8] Five-year Evaluation Results, Healthy Families Florida, March 2005. Sponsored by the Ounce of Prevention Fund of Florida and the State of Florida, Department of Children & Families.

On July 15, 2005, a letter was sent to all members of the Florida House of Representatives requesting the name(s) and contact information of prevention programs within their districts that have been successful in reducing the incidence of abuse or have resulted in children and families not entering the child welfare system. Over 30 legislators responded identifying approximately 75 programs within their districts that were successful. Still, it is reported by the Department of Children and Families that these programs have produced small improvements in the level of child abuse, neglect, and abandonment, mainly because "there remain far too many children and families at risk of and suffering from maltreatment."

Recognizing the importance of reducing maltreatment and the conditions that are likely to promote abuse, the Legislature mandated that the Department of Children and Families work with an interdisciplinary task force to develop a statewide plan for child abuse prevention.[9] This statewide plan was released in June 2005. Membership of the Florida Interprogram Task Force included the following representatives:

- Agency for Persons with Disabilities;
- Agency for Workforce Innovation;
- Community Alliances;
- Community-based Care;
- Department of Children and Families;
- Department of Education;
- Department of Health;
- Department of Juvenile Justice;
- Florida Department of Law Enforcement;
- Miccosukee Tribe;
- Prevent Child Abuse Florida; and
- Parents.

In response to these findings, the Future of Florida's Families Committee was granted authority to conduct an Interim Project to shed light on many of the problems being faced throughout the state in dealing with child maltreatment. While there are varying schools of thought on the origins of child maltreatment, most theories of child maltreatment recognize that the root causes can be organized into a framework of four principal systems: (1) the child; (2) the family; (3) the community; and (4) the society. The interim project examined many of the current prevention strategies that are operating throughout the state with the intent of outlining the prevention methods being used, the populations being served, and the outcomes and effectiveness of the current system.

Having the benefit of the background research, findings and recommendations of the Task Force, and in conjunction with an approved Interim Project, Speaker Allan Bense granted permission for the members of the Future of Florida's Families Committee to conduct a series of public hearings throughout the state with the primary objectives of:

- Bringing awareness to the impact on Florida's families of abuse, neglect, molestation, abandonment, and death of children;
- Enabling the members of the committee to dialogue with at-risk families and providers of prevention and child protective services; and
- Aiding in the development of legislation to reduce the incidence of abuse, neglect, and abandonment of children in Florida.

With the assistance of the various state agencies involved in abuse prevention efforts and state and local providers of services, the public hearings were planned and held in September and October 2005 in Jacksonville, Tampa, Miami, and West Palm Beach.

[9] "Florida's State Plan for the Prevention of Child Abuse, Abandonment, and Neglect: July 2005 through June 2010." Developed by The Florida Interprogram Task Force, June 2005.

At the conclusion of the hearings, stakeholders were asked to provide to the members of the Future of Florida's Families Committee a broad list of Policy Options that could be discussed and evaluated for possible inclusion in a proposed committee bill. Over 26 Policy Options were received. The options were reviewed and ranked by the members of the committee and on January 11, 2006, there was a consensus to incorporate the following recommendations into a Proposed Committee Bill:

- Establish an Office of Child Abuse Prevention within the Executive Office of the Governor.
- Require that some portion of child abuse prevention funding be dedicated to the controlled longitudinal evaluation of program effectiveness.
- Continue to support, strengthen, and expand the Healthy Families Florida Program statewide so that it is available to all families that are at risk of child abuse and neglect and other poor childhood outcomes.
- Identify the Florida Statewide Advocacy Council (FSAC) and the Florida Local Advocacy Councils (FLACs) as "Medicaid Oversight" regarding the release of recipient information in abuse reports.
- Require each school district to establish written procedures for the immediate reporting of suspected or known child abuse by an individual who is employed by or otherwise contracted by a public school.
- Address the needs of young adults in foster care and young adults who age out of foster care to help prevent the occurrence of abuse and neglect of their children.

The Office of Child Abuse Prevention

The fundamental foundation for the delivery of services by the Department of Children and Families (DCF) and the other involved state agencies regarding Abuse Prevention is fragmented. The result of this fragmentation and inefficiency has created a tangled maze of services that is not only un-navigable by the providers but also the recipients of services. This maze has created inefficiency and waste as well as confusion among communities as to what services are being offered and how to access those services.

One of the findings of the committee was that long-term Abuse Prevention can save the state millions if not billions of dollars, but it is not feasible to continue to pour more money into a system in which the foundation for success is flawed. Addressing "prevention" is an issue that must have long-range goals.

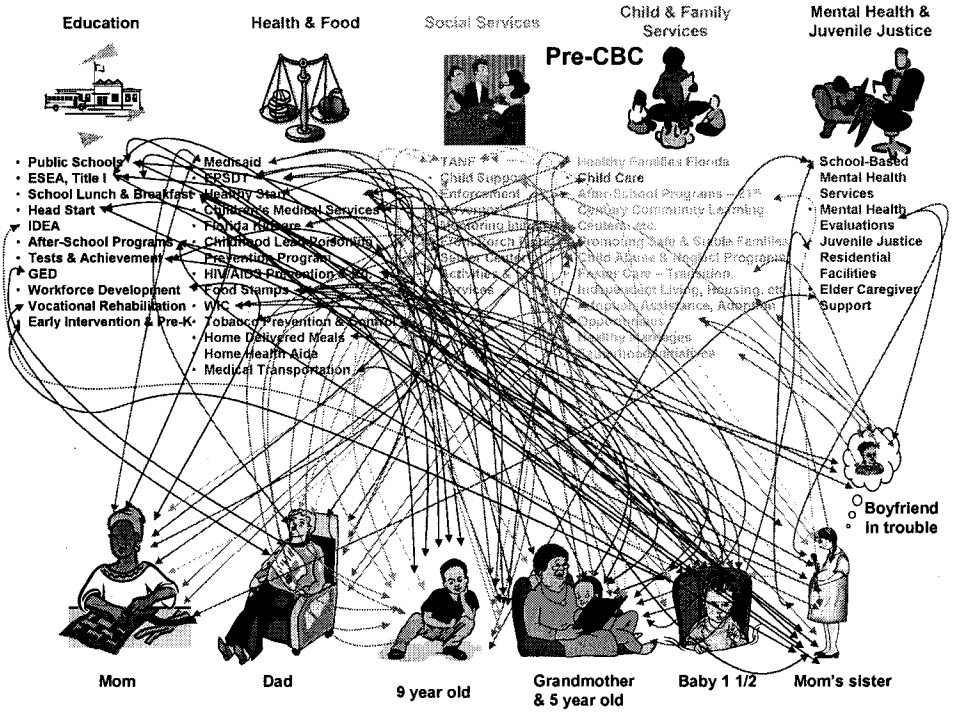
Child abuse, neglect, and abandonment cost the state millions of dollars each year, yet a centralized office to examine, oversee, and implement prevention services of abuse has yet to be put into place. Without an organized effort, there is a concern that prevention will continue to fall through the cracks.

The current system is a tangled maze of services (See diagram which follows):

- Programs that focus on primary and secondary prevention of child abuse are offered by the Department of Children and Families (DCF) and at least six other state agencies, including the: Department of Education, Department of Health, Department of Juvenile Justice, the Agency for Persons with Disabilities, the Agency for Workforce Innovation, and the Florida Department of Law Enforcement, and thousands of community organizations. This results in a tangled maze of services that providers and people trying to access the services must attempt to navigate.
- This uncoordinated system makes it unclear what services are being offered, how to access these services, duplication of services, and results in inefficiency and waste. An Office of Child Abuse Prevention would coordinate statewide prevention efforts and keep children out of the child welfare system.
- Coordination of services would improve delivery of child abuse prevention programs, decrease barriers between community providers and the families needing services, and

connect private providers into a system that would result in a more efficient use of taxpayer monies.

Tangled Maze of Services



Future of Florida's Families Committee, Prevention of Child Abuse and Neglect Public Hearing, Miami, Florida Commission on Marriage and Family Support Initiatives, 3 October 2005

Florida's population is growing significantly, which will increase the number of children and families in the state. The American Community Survey (ACS) has been developed by the Census Bureau to provide population estimates annually. The percent change in growth of children in the United States is a 1.51% increase over the last five years. However, the percent change in growth in children in Florida over the last five years is a 9.87% increase. Therefore, over the last five years the percent increase of children in Florida is over six times the increase in the U.S. Furthermore, the growth in children in Florida accounts for almost one third of the increased number of children in the U.S. Therefore, simply by an increase in numbers, the volume of potential cases of children and families that may enter the child welfare system should increase. This means that there will be more children and families potentially at risk or involved in child abuse and neglect than ever before in the State of Florida.

The Rationale for Prevention

- No disease or social problem has ever been brought under control by providing after-the-fact treatment to the victims of the disease or problem.
- Preventive, proactive, before-the-fact interventions have, historically, been the only effective way to control or eliminate important diseases. Public health prevention programs to control smallpox and polio are prime examples.
- Prevention interventions are not only very effective they are remarkably cost effective – often costing only a small fraction of the expense of the treatment. Hence the phrase, "an ounce of prevention is worth a pound of cure."

Maximizing prevention opportunities may mean making difficult decisions about how organizations utilize their funding. Prevention services reduce costs in the long run and can

provide families with services in a less stigmatized manner. The integration of the full range of family support services requires a re-conceptualization of the frame of mind as to which "prevention is applied." According to the Centers for Disease Control, the cost of not preventing child abuse and neglect in 2001 equaled $94 billion a year nationally. These direct costs include the utilization of the health care system, the mental health system, the child welfare system, the law enforcement, and the judicial system -- while the indirect costs include the provision of special education, mental health and health care, juvenile delinquency, lost productivity to society, and adult criminality. Therefore, prevention should be looked at as a sound investment.

What other states are doing

Oklahoma:

In 1984, the Office of Child Abuse Prevention was created in the Oklahoma Child Abuse Prevention Act. Prior to 1984, the focus of child abuse and neglect was an "after the fact" intervention, preventing the recurrence of child abuse and neglect. The act declared that the prevention of child abuse and neglect was a priority in Oklahoma. In accordance with the Act, the Office of Child Abuse Prevention was created and placed within the Oklahoma State Department of Health to emphasize the focus of prevention. The mission of the office is to promote the health and safety of children and families by reducing family violence and child abuse, including neglect, through public health education, multidisciplinary training of professionals, and funding of community-based family resource and support programs.

California:

In 1977, the Office of Child Abuse Prevention was created in California. It has been reported by the office that having a coordinated streamlined approach to prevention has worked. The office in California has a very similar mission to the Oklahoma Office.

Early History of Independent Living

When they become 18, many young adults, a great number of whom have grown up in foster care, lose the support they received while in care. Without the support of a family, they are on their own to obtain further education and preparation for employment, as well as health care, mental health care, and housing. These young adults encounter tremendous obstacles that may put their emotional, economic, and personal security at risk.

Aftercare is defined as the period of time following discharge from foster care. It is that time when young individuals who have been preparing for self-sufficiency while in care must begin to operationalize the skills they have been working to master. Aftercare services are typically defined as a system of services and resources designed for those youth who are 16-21 years of age, in post placement who are living in an independent living arrangement. Historically, aftercare services have been difficult and challenging to provide, many times because they have been "relegated to an out-of-sight, out-of-mind status." It is now known that aftercare services should begin while the child is still in care.[10]

Federal funds for independent living initiatives were first made available in the United States under the Consolidated Omnibus Budget Reconciliation Act of 1985. This act authorized funds to states to establish independent living initiatives to assist eligible youth 16 years of age and older to make the transition from foster care to independent living.[11] A total of 45 million dollars

[10] See The John H. Chafee Foster Care Independence Program, Aftercare Services, The University of Oklahoma, National Resource Center for Youth Development, 2003.

[11] The Independent Living Program was initially authorized by Public Law 99-272, through the addition of section 477 to Title IV-E of the Social Security Act.

was authorized for the program across the nation, with state shares based on the number of children/youth in foster care. The U.S. Department of Health and Human Services, Administration for Children, Youth and Families, issued the first set of program instructions to the states in early 1987. Each state was able to determine the nature and scope of their Independent Living Program, but guidelines from the federal government provided recommended specific program components. The recommended list included services such as GED or vocational training, daily living skills, job readiness and employability skills, and assistance obtaining higher education.

John H. Chafee Foster Care Independence Program

In a further effort to increase services and strengthen state programs for teens in foster care, Congress passed the Foster Care Independence Act of 1999, which was signed into law as the John H. Chafee Foster Care Independence Program. The Chafee Program made substantial changes in federal efforts targeted toward youth and young adults up to age 21 in the foster care component of the child welfare system. The law significantly improved the ability of states to achieve the national goals of safety, permanence and well-being for youth and young adults in the child welfare system.[12] The new federal law doubled the appropriations nationally and increased Florida's allocation substantially.

The Chafee Program legislation included provisions that:

- Required states to make services available to youth up to 21 years of age;
- Required states to serve youth younger than 16 years of age for the first time;
- Permitted states to use up to 30% of their allocation for room and board costs and services for youth ages 18-21 who leave foster care on or after 18 years of age;
- Allowed states to provide Medicaid insurance to youth 18-21 years of age who leave foster care;
- Increased the limit on youth savings accounts from $1,000 to $10,000 so that youth in foster care can save and still be eligible for Title IV-E foster care benefits;
- Required states to develop outcome measures to assess state performance;
- Required states to use Title IV-E funds to train adoptive/foster care parents, workers in group homes, and case managers to help them address issues confronting adolescents preparing for independent living; and
- Authorized additional funds for adoption incentive payments to states that increased the number of children adopted from foster care.

Education and Training Vouchers

In 2002, Title IV-E of the Social Security Act, related to the Foster Care Independent Living program, was again amended to provide for vouchers for education and training, including postsecondary training, and training for youths aging out of foster care.[13] Conditions required for a state educational and training voucher program under this legislation include, but are not limited to, the following:

- Vouchers may be available to youths otherwise eligible for services under the state independent living program;
- Youths adopted from foster care after attaining age 16 may be considered to be youths otherwise eligible for services under the state program;
- States may allow youths participating in the voucher program on the date they attain 21 years of age to remain eligible until they attain 23 years of age, as long as they are enrolled in a post secondary education or training program and are making satisfactory progress toward completion of that program;

[12] See P.L. 106-169.
[13] See P.L. 107-133.

- Vouchers provided for an individual may be available for the cost of attendance at an institution of higher education[14] and shall not exceed the lesser of $5,000 per year or the total cost of attendance; and
- The amount of a voucher under this section shall be disregarded for the purposes of determining the recipient's eligibility for, or the amount of, any other federal or federally supported assistance, with some exceptions.

Florida Law

With the passage of the federal law and increased available funding, the 2002 Legislature established a new framework for Florida's independent living transition services to be provided to these older youth. Specifically provided for was a continuum of independent living transition services to enable older children who are 13 to 18 years of age and in foster care and young adults who are 18 to 23 years of age who were formerly in foster care to develop the skills necessary for successful transition to adulthood and self-sufficiency. Service categories established include the following:

- Pre-independent living services which include life skills training, educational field trips and conferences for children in foster care who are 13 to 15 years of age;
- Life skills services which include independent living skills training, educational support, employment training and counseling for children in foster care who are 15 to 18 years of age; and
- Subsidized independent living services which are services provided in living arrangement that allow a child who is 16 to 18 years of age to live independently of adult supervision under certain specified circumstances.

A category of services for young adults formerly in foster care was also created to provide services, based on the availability of funds, which included aftercare support services, the Road to Independence Scholarship Program, and transitional support services. In addition, young adults who are awarded a Road to Independence Scholarship are exempt from the payment of tuition and fees for state universities, community colleges, and certain postsecondary career and technical programs and retain their Medicaid eligibility.[15]

The Department of Children and Family Services was directed to form an Independent Living Services Integration Workgroup for the purpose of assessing the barriers to the coordination of services and supporting the youths' transition to independent living with a report to be submitted to the Legislature by December 31, 2002.[16] In 2003, the Independent Living Services Integration Workgroup was replaced with the Independent Living Services Workgroup.[17] The representation on the workgroup remained the same with representatives from state agencies involved in service delivery to older foster children as well as representatives from the State Youth Advisory Board and foster parents. The charge to the workgroup was expanded to include assessing the implementation of the independent living transition services system, keeping the Department of Children and Families informed of the problems surfacing and successes experienced with the independent living transition services, and advising the department on strategies that would improve the ability of the system to meet its goals.

The experiences of the independent living transition services program since its inception have pointed to the importance of effective and early service delivery to meet the goals of building the youths' ability to transition to independence and self-sufficiency. However, questions continue to be raised as to whether there is adequate attention being paid to preparing youth for adulthood and independent living, whether funding is sufficient to support the increasing

[14] See definition in section 102 of the Higher Education Act of 1965.
[15] See s. 409.1451, Florida Statutes.
[16] See Chapter 2002-19, Laws of Florida.
[17] See Chapter 2003-146, Laws of Florida.

requests for services, whether services should be more supportive of young adults not pursuing postsecondary education, and whether there is sufficient guidance and oversight being provided to the community-based care agencies that will ensure the effectiveness of the services and ensure that the goals of the program are met. As a result of continuing concerns, the Auditor General was directed to conduct an operational audit of the program and the Office of Program Policy Analysis and Government Accountability (OPPAGA) was directed to develop minimum standards for the program.[18] In addition, OPPAGA conducted another evaluation of the program in 2005.[19]

To date, it remains unclear whether any of the deficiencies identified in the reports have been corrected or whether the recommended minimum standards have been implemented.

Mandatory Reporting Public School Personnel

Florida law requires any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or **other person responsible for the child's welfare** to report such knowledge or suspicion to the Department of Children and Family Services' hotline as prescribed by law.[20]

Florida law also provides that reporters in the following occupation categories are required to provide their names to the hotline staff when reporting:

- Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons.
- Health or mental health professional other than one listed above.
- Practitioner who relies solely on spiritual means for healing.
- School teacher or other school official or personnel.
- Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker.
- Law enforcement officer.
- Judge.

Other Person Responsible for a Child's Welfare

The term "other person responsible for a child's welfare" is defined as:

> "...the child's legal guardian, legal custodian, or foster parent; **an employee of a private school**, public or private child day care center, residential home, institution, facility, or agency; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmental investigative jurisdiction, this definition does not include law enforcement officers, or employees of municipal or county detention facilities or the Department of Corrections, while acting in an official capacity."[21]

[18] See Chapter 2004-362, Laws of Florida. Auditor General Report No. 2005-119 and OPPAGA Report No. 04-78, *Independent Living Minimum Standards Recommended for Children in Foster Care*, November 2004.
[19] OPPAGA Report No. 05-61, *Improvements in Independent Living Services Will Better Assist State's Struggling Youth,* December 2005.
[20] See s. 39.201, F.S.
[21] See s. 39.01(47), F.S.

Failure to Report

Florida law provides that a person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.[22]

Public School Personnel

Public school personnel are not currently included in the definition of "other person responsible for a child's welfare." They were removed from the definition in 1993.[23] By not being included in this definition or otherwise being referenced in s. 39.201, F.S., persons knowing or having reasonable cause to suspect that a child is being abused by a public school employee are not required to make a report to the central abuse hotline. Likewise, persons who have such knowledge or suspicion that abuse by a public school employee has occurred and does not report it, cannot be prosecuted for failure to report under s. 39.205, F.S. (*State of Florida vs. Meyers*, 9th Judicial Circuit, 2004, Case No. 03-MM-001038).

Boarding Schools

A "boarding school" is defined as:

> "...a school which is registered with the Department of Education as a school. Its program must follow established school schedules, with holiday breaks and summer recesses in accordance with other public and private school programs. The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year-round, except that this provision does not apply to foreign students. The parents of these children retain custody and planning and financial responsibility."[24]

A small military school in Fort Lauderdale, Florida closed during the summer of 2005 as a result of allegations that students were being abused. During the course of the investigation by Broward County law enforcement, it was determined that boarding schools are exempt from regulation by both the Department of Children and Family Services and the Department of Education:

- A person, family foster home, or residential child-caring agency shall not receive a child for continuing full-time care or custody unless such person, home, or agency has first procured a license from the department to provide such care.

This license requirement does not apply to boarding schools, recreation and summer camps, nursing homes, hospitals, or to persons who care for children of friends or neighbors in their homes for periods not to exceed 90 days or to persons who have received a child for adoption from a licensed child-placing agency.[25]

- It is the intent of the Legislature not to regulate, control, approve, or accredit private educational institutions, but to create a database where current information may be obtained relative to the educational institutions in this state coming within the provisions of this section as a service to the public, to governmental agencies, and to other interested parties. It is not the intent of the Legislature to regulate, control, or monitor, expressly or implicitly, churches, their ministries, or religious instruction, freedoms, or

[22] See s. 39.205, F.S.
[23] See Chapter 93-25, Laws of Florida.
[24] See s. 409.175, F.S.
[25] See s. 409.175, F.S.

rites. It is the intent of the Legislature that the annual submission of the database survey by a school shall not be used by that school to imply approval or accreditation by the Department of Education.[26]

Statewide and Local Advocacy Councils

The Statewide Advocacy Council (SAC) and Local Advocacy Councils (LAC) (collectively, the "SAC") was created to serve as a volunteer network of councils that undertake to discover, monitor, and investigate the presence of conditions that constitute a threat to the rights, health, safety or welfare of persons who receive services from state agencies. The SAC is entitled to serve as an independent, third-party mechanism for protecting the constitutional and human rights of "clients" by entering into Interagency Agreements with agencies providing "client services" as defined under s. 402.164(2)(c), F.S. "Clients" are strictly limited under the statute to certain individuals receiving particular services at four state agencies: the Agency for Persons with Disabilities (APD), the Department of Children and Families (DCF), the Agency for Health Care Administration (AHCA), and the Department of Elder Affairs (DOEA).

Interagency Agreements[27] are written to address the coordination of efforts and identify the roles and responsibilities of the SAC and each agency in fulfillment of their responsibilities, including access to records. For these agencies, the SAC may:

(1) Monitor by site visit and through access to records the delivery and use of services, programs or facilities, in order to prevent the abuse or deprivation of rights;
(2) Receive, investigate, and resolve reports of abuse or deprivation referred to the council; and
(3) Review existing, new or revised programs of agencies and make recommendations based on how "clients" are affected.

Access to Records

With a few exceptions described below, s. 402.165(2), F.S., provides that the SAC may have access to all client records, files, and reports from any person, service, or facility that is operated, funded, or contracted by the agencies above. The SAC is further permitted to records that are considered "material to investigation" from agencies that do not provide "client services" to "clients;"[28] however, the SAC is not expressly entitled to form interagency agreements or receive records from these agencies.

The SAC's access to "client" records at "client services" agencies has been limited by the Legislature where:[29]

(1) Investigation or monitoring would impede or obstruct matters under investigation by law enforcement agencies or judicial authorities;
(2) There are federal laws and regulations that supersede state laws; and
(3) The records belong to a private licensed practitioner who is providing services outside the state agency or facility, and whose client is competent and refuses disclosure.

[26] See s. 1002.42(2)(h), F.S.
[27] Interagency Agreements are described in s. 402.165(7)(j), F.S.
[28] Agencies that do not provide "client services" to "clients" include the Department of Education (DOE), the Department of Health (DOH), the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ).
[29] Sections 402.165(8)(a)2. and 402.166(8)(a), F.S.

Federal Regulations that Limit SAC Access to Records

Section 402.165(8)(a)2., F.S., limits the SAC's access to information where such information is protected by superseding federal law. The Social Security Act (SSA) and the Health Insurance Portability and Accountability Act (HIPAA) are examples of two such federal laws. As federal Medicaid law, the SSA makes confidential certain information such as names and addresses, medical services provided, social and economic conditions, agency evaluation of personal information, medical data, income eligibility information, etc., as provided in 42 C.F.R. 431.305. To obtain Medicaid recipient information:

(1) Disclosure must be directly related to the administration of the state Medicaid plan.
- Example: The SAC may request to see medical records of a foster child who receives Medicaid to determine if the child is actually receiving the medical services covered under the plan.

(2) The recipient must give permission for the disclosure.

(3) The disclosing entity must restrict access to persons who are subject to comparable standards of confidentiality.
- This presents some difficulty in some cases where the SAC requests access to mass data records for volunteer members to handle on unsecured home computers.

HIPAA further prohibits disclosure of a patient's personal health information ("PHI") without the consent of the patient. There are several exceptions to these requirements. One exception is disclosure of PHI to a "health oversight agency" (HOA) performing "health oversight activities." A HOA is defined as:[30]

> "...an agency or authority of the United States, a State, a territory, a political subdivision of a State or such public agency, including employees or agents of such public agency or its contracts or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant."

Designation of "Health Oversight Agency"

Currently, the SAC is not a health oversight agency. According to an analysis by the Governor's General Counsel's Office, the SAC is not authorized by law to oversee Florida's health care system, or to oversee government programs in which health information is necessary to determine eligibility. The common usage of the term "oversee" and the types of activities it encompasses in HIPAA imply some authority to manage or supervise. The SAC's role is to "monitor" the delivery and use of services, programs or facilities; to make recommendations; and to receive and resolve reports of abuse. In other words, the SAC is designated to advocate, not oversee.

EFFECT OF PROPOSED CHANGES:

The Office of Child Abuse Prevention

As a result of the interim project, the public hearings, and research conducted, the Future of Florida's Families Committee recommended that an Office of Child Abuse Prevention (office) be created for the purpose of establishing a comprehensive statewide approach for the prevention of child abuse, abandonment, and neglect. The Office of Child Abuse prevention is created

[30] 45 C.F.R. s. 164.051.

within the Executive Office of the Governor, and the Governor shall appoint the director who shall be subject to confirmation by the Senate.

Before the state can fiscally increase new prevention efforts, a centralized statewide integrated service network needs to be created – similar to the Office of Drug Control housed in the Executive Office of the Governor. The purpose of this office would be to continue to address the prevention needs of this state but also to centralize a community network throughout the state to increase communication, to more efficiently deliver services, while providing easy access to the citizens of the State of Florida to those services. By bringing together all the programs in the state it should create an environment conducive to a more "Prevention Focused" state effort to better serve the children and families of Florida.

Creating an Office of Child Abuse Prevention is viewed as untangling the fragmented web of services to bring a more efficient, streamlined and accessible array of services to the families of the State of Florida. That is, layers should be removed, communication networks should be developed, prevention management should increase, and accountability should be created. A centralized prevention office will lay the foundation for success in accessing prevention services for years to come.

The Director: The director's responsibilities include the following:

- Formulate and recommend rules pertaining to the implementation of child abuse prevention efforts.
- Act as the Governor's liaison with state agencies, other state governments, and the public and private sectors on matters that relate to child abuse prevention.
- Work to secure funding.
- Develop a strategic program and funding initiative.
- Advise the Governor on child abuse trends in the state.
- Develop child abuse prevention public awareness campaigns.

The Office: The office is authorized and directed to:

- Oversee the preparation and the implementation of a state plan and revise and update the plan as necessary.
- Conduct or provide for continuing professional education and training in the prevention of child abuse and neglect.
- Work to secure funding.
- Make recommendations pertaining to agreements or contracts towards child abuse and neglect for the establishment of programs and services, training programs, and multidisciplinary and discipline-specific training programs for professionals.
- Monitor, evaluate, and review the development and quality of local and statewide services and programs for the prevention of child abuse and neglect and distribute and publish an annual report of its findings before January 1 of each year.

The office shall develop a state plan for the prevention of child abuse, abandonment, and neglect of children. Appropriate state and local agencies and organizations shall be provided an opportunity to participate in the development of the state plan.

The office shall establish a Child Abuse Prevention Advisory Council, which will be composed of representatives from each appropriate state agency and appropriate local agencies and organizations. The Advisory Council will replace the Interprogram Task Force that is in current law and shall serve as the research arm of the office. Some of its responsibilities include:

- Assisting in developing a plan of action for better coordination and integration of the goals, activities, and funding pertaining to the prevention of child abuse.

- Assisting in providing a basic format to be utilized by districts in the preparation of local plans of action.
- Assisting in examining the local plans.
- Assisting in the preparing the state plan.
- At least biennially, the office shall review the state plan and make necessary revisions based on changing needs and program evaluation results.

Conduct a feasibility study on the establishment of a Children's Cabinet: The office shall conduct a feasibility study on the establishment of a Children's Cabinet. Several states, including Alaska, Arizona, Louisiana, Maine, New Jersey, New Mexico, Pennsylvania, Rhode Island, Tennessee, and West Virginia have Children's Cabinets. There are number of ways they can be set up, implemented and funded. According to the National Governors Association, important factors in determining the success of a Children's Cabinet are proper planning, support, and developing a proper mission to meet the needs of the state.

District Plans: Each district of the Department of Children and Families (DCF) shall develop a plan for its specific geographical region. The plan shall be submitted to the advisory council. In order to accomplish the development of the plan, the office shall establish a task force on the prevention of child abuse, abandonment, and neglect. The office shall appoint the members of the task force.

Evaluation: By February 1, 2009, the Legislature shall evaluate the office and determine whether it should continue to be housed in the Executive Office of the Governor or transferred to a state agency.

Independent Living

The bill amends s. 409.1451, Florida Statutes, related to independent living transition services, to include a number of new provisions. Specifically, the bill:

- Makes young adults who were placed with a court-approved nonrelative or guardian after reaching age 16 and have spent a minimum of 6 months in foster care to be eligible to be provided with independent living transition services;
- Requires the development of a plan by each community-based care service area to be submitted to the department;
- Provides for the direct deposit of RTI funds to the recipient with exceptions;
- Requires the development of a joint transition agreement and provides for access to a grievance process;
- Provides for community-based care lead agencies to purchase housing and other services in order to take advantage of economies of scale; and
- Provides for the expansion of Kidcare coverage for eligible young adults until age 20.

Additionally, the bill amends s.1009.25, Florida Statutes, to require that certain educational fee exemptions be granted to those individuals who, after spending at least 6 months in the custody of DCF after reaching age 16, were placed in a guardianship by the court.

Public School Personnel

The bill adds public school employees back into the definition of "other person responsible for a child's welfare." This makes public school personnel subject to the reporting requirements of Chapter 39, F.S.

Boarding Schools

The bill requires boarding schools to be accredited by either the Florida Council of Independent Schools or the Southern Association of Colleges and Schools and the Council on Accreditation. It also

provides that a boarding school currently in existence or opening and seeking accreditation has three years to comply with the provisions of the bill. The bill provides sanctions for those schools not in compliance by failing to provide evidence of accreditation, documentation of an ongoing accreditation process or registration with the Department of Education.

Statewide and Local Advocacy Councils (SAC)

The bill adds language intended to resolve obstacles faced by the SAC in obtaining "client" records in those cases where information is entitled to them. The amended language restates the intent of the Legislature to use citizen volunteers as members of the SAC "to discover, monitor, investigate, and determine the presence of conditions or individuals that constitute a threat to the rights, health, safety, or welfare of persons who receive services from state agencies." The bill clarify that it is further the intent of the Legislature that certain state agencies cooperate with the SAC to provide access to necessary client records.

The bill strengthens the ability of the SAC, and particularly the local councils, to monitor, investigate and resolve claims of abuse and neglect. The bill accomplishes this through the following provisions:

(1) Encourages the Governor to give priority consideration to an individual with expertise in research design, statistical analysis, and/or agency evaluation in the selection of an executive director.
(2) Provides that for all self-generated complaints the SAC shall develop written protocol to provide the Governor's Office including the nature of the abuse or neglect, the agencies involved, additional information, and a strategy for approaching the problem.
(3) Reduces the number of meeting requirements from six times per year to one time per year; and maintains the option for the SAC to hold additional meetings at the call of the Governor, or by written request of a specified number of members including the executive director.
(4) Specifies the information contained in the interagency agreements between the SAC and state agencies, and to require that agreements are completed and reported to the Governor annually by no later than February 1 each year.

C. SECTION DIRECTORY:

Section 1: Amends s. 39.001, F.S., revising legislative purposes and intent of the chapter to include child abuse prevention; creates the Office of Child Abuse Prevention.

Section 2: Amends s. 39.0014, F.S., requiring all public agencies to cooperate and provide information to the Office of Child Abuse Prevention to meet its responsibilities.

Section 3: Amends s. 39.0015, F.S., revising the definition of "child abuse."

Section 4: Amends s. 39.01, F.S., adding definition of "office" and revising definitions of "other person responsible for a child's welfare."

Section 5: Amends s. 39.202, F.S., providing access to records for agencies that provide early intervention and prevention services.

Section 6: Amends s. 39.302, F.S., providing a cross-reference.

Section 7: Amends s. 402.164, F.S., establishing legislative intent for the statewide and local advocacy councils.

Section 8: Amends s. 402.165, F.S., providing guidelines for selection of the executive director of the Florida Statewide Advocacy Council, establishing a process for investigating reports of abuse, revising

council meeting requirements, providing requirements for interagency agreements, and requiring interagency agreement to be renewed annually and submitted to the Governor by a specified date.

Section 9: Amends s. 409.1451, F.S., revising duties of the department regarding independent living transition services.

Section 10: Amends s. 409.175, F.S., revising the definition of "boarding school" to require such schools to meet certain standards within a specified timeframe.

Sections 11 and 12: Amend ss. 39.013 and 39.701, F.S., conforming references to changes made in the act.

Section 13: Amends s. 1009.25, F.S., providing for fee exemption for eligible students.

Section 14: Provides the sum of $11.4 million in recurring funds appropriated from the General Revenue Fund to the Ounce of Prevention Fund of Florida.

Section 15: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The state will earn $3,994,766 in Title XIX (Medicaid) funds for the expansion of health care coverage for young adults formerly in foster care up to their 20th birthday.

2. Expenditures:

   See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments section.

D. FISCAL COMMENTS:

The bill appropriates $11.4 million in recurring general revenue funds for the expansion and enhancement of Florida Healthy Families Program.

In addition, the Department of Children and Family Services provided the following Fiscal Comments on the Office of Child Abuse Prevention:

- The creation of this new office per the proposed bill language will require new appropriations. Three staff positions are needed to carry out the oversight, monitoring and analysis of the Prevention activities: Administration Director, Senior Management Analyst and an Administrative Assistant II. There will be a recurring budget need of **$228,180** for Salaries,

Expense and Human Resources; and a non-recurring budget need of **$15,377** for Expense and Operating Capital Outlay. The salary numbers reflect a 10% above base minimum with a 2.5% increase for Fiscal Year 2006-07 and Fiscal Year 2007-08.

The Department of Children and Family Services provided the following Fiscal Comments on the Independent Living sections of the bill:

Expansion of the foster care population eligible to receive independent living transition services:

- An ad hoc report provided by the department's data staff indicates that 188 youth turned age 18 during FY04/05 who were in an unlicensed setting for at least 6 months and placed at age 16 or after. Approximately 50% of the total number of young adults exiting foster care received services from the RTI scholarship services, transitional support services, and/or aftercare support services.

- If the equivalent percentage of young adults who age out of unlicensed placements, as mentioned above, became eligible for the Road to Independence Program award, the additional participants would equal 188 x .50 = 94. The maximum amount of funding that each young adult could receive per year through the Road to Independence Program is $5,000. The 94 additional participants would be potentially eligible for services until their 23rd birthday.

- Estimated costs per year to fund additional participants: 94 times $5,000 equals $470,000 x 5 years of participants (18, 19, 20, 21 and 22 year olds) not yet 23 years of age equals a total of **$2,350,000** per year.

Increase in Casework Staff for Expanded Population:

- A reasonable number of casework staff would be required in order to determine eligibility for services, provide outreach, and provide case management. A 1:20 caseload ratio would be reasonable to provide these services for young adults. As assumed previously, an additional 94 young adults may be served with young adult services each year until age 23. Ninety-four young adults times 5 years equals 470 recipients divided by 20 = 23.5 additional staff needed. Supervisory staff will also be needed at a 6 to 1 ratio for a total of 4 additional supervisors.

- 23.5 caseworkers at $44,531 per year = $1,046,477 for salaries. There will be a recurring budget need of **$1,206,184** for salaries, expense and human resources; and a non-recurring budget need of **$123,211** for expense and operating capital outlay. The salary number reflects a 10% above base minimum with a 2.5% increase for Fiscal Year 2006-07 and Fiscal Year 2007-08.

- 2 supervisors at $49,579 per year = $198,316 for salaries. There will be a recurring budget need of **$225,500** for salaries, expense and human resources; and a non-recurring budget need of **$20,972** for expense and operating capital outlay. The salary number reflects a 10% above base minimum with a 2.5% increase for Fiscal Year 2006-07 and Fiscal Year 2007-08.

Public School Personnel - The Department of Children and Family Services estimates that it will cost the agency **$215,404** in recurring costs for salaries, expense and human resources, and **$20,972** in non-recurring costs for expense and Operating Capital Outlay to implement this provision of the bill.

Expansion of Kidcare Coverage-The bill expands coverage of the Kidcare program for young adults formerly in foster care up to their 20th birthday. The estimated cost of this coverage is $2,802,522 annually in state general revenue funds. This is based on1,523 young adults age 18 and 19. The total

cost would be $6,797,288, which includes the state general revenue funds and federal matching dollars of $3,994,766.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is provided to the Executive Office of the Governor for creation of the Office of Child Abuse Prevention.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following comments were provided by the Department of Children and Family Services:

- The Florida Legislature, in 1982, in recognition of the importance of reducing maltreatment by addressing conditions that are likely to promote the prevention of abuse, mandated that the Department of Children and Families develop a statewide plan for child abuse prevention. Following the guidelines set forth in Florida statute, the Department of Children and Families established the Florida Interprogram Task Force to work at the state level and with local communities to develop a statewide plan for the prevention of child abuse, neglect and abandonment. Florida's Plan for Prevention of Child Abuse, Abandonment and Neglect: July 2005 - June 2010 was produced. Local communities also developed a local prevention of child abuse, neglect and abandonment plan.

- The Interprogram Task Force has provided technical assistance to the local planning coordinators for the development, implementation, and review of the local plans to assure implementation efforts are successful. The Interprogram Task Force provides technical assistance to the local planning coordinators, both as requested and on a monthly conference call with all state local planners.

- The Executive Committee of the Interprogram Task Force has met on a bi-monthly basis since September 2005 to assure compliance with state and local prevention plan implementation. In addition, the Task Force has seven subcommittees that meet at least monthly. The purpose of the subcommittees is to review quarterly progress reports received from the local planning teams, to provide recommendations on best practices to local planners and to assist with the development of the annual progress report to the Legislature due June 30th of each year.

- In collaboration with the Prevent Child Abuse America Florida Chapter, the Interprogram Task Force will be involved in the Prevention Month kick-off scheduled for April 4, 2006 at the State Capitol in Tallahassee. Prevent Child Abuse America Florida Chapter under contract with the Department of Children and Families provides the annual prevention campaign throughout the state. The theme this year is "Winds of Change."

- If this bill passes and creates an Office of Child Abuse Prevention within the Executive Office of the Governor, it would be replicating the responsibilities of the Department of Children and Families. A number of the proposed requirements are already being completed by the Department of Children and Families and community-based contract providers. Examples of these requirements that are already under way include:

    1. Annual reporting to the Governor, Legislatures, etc.
    2. Establishing a Child Abuse Prevention Advisory Board (this is the Interprogram Task Force).
    3. Providing statewide coordination or single state agency responsibility for oversight of these programs (the Department of Children and Families is the current agency responsible for coordination of programs).
    4. Developing a strategic program and funding initiative that links the separate jurisdictional activities of state agencies (this is planned for the future with the Executive Task Force).
    5. Developing a Child Abuse prevention public awareness campaign; this is done on a yearly basis in April (Child Abuse Prevention Month) under contract with the Ounce of Prevention.

The Office of Child Abuse Prevention may replicate efforts of the Department of Children and Families; however, the mission and purpose of the Department of Children and Family Services as stated in s. 20.19(1), F.S., is to "...work in partnership with local communities to ensure safety, well-being, and self-sufficiency of the people served, to develop a strategic plan for fulfilling its mission...to ensure that the department is accountable to the people of Florida, and to the extent allowed by law and within specific appropriations, the department shall deliver services by contract through private providers."

By having an Office of Child Abuse Prevention with its sole mission and focus towards prevention and intervention will create government efficiency:

- The current system targets all levels of child abuse: primary, secondary, and tertiary. Prevention programs are located at all levels of government and in many different state agencies. In our current system the primary focus is on "tertiary prevention," clinical services, for cases in which the child or family has experienced abuse. This is an appropriate focus because the children and their families need immediate help to deal with abuse, as is the role of the Department of Children and Family Services.

- However, the "after the fact" approach will not prevent child abuse in Florida – it may only prevent a recurrence. Primary prevention programs must not be a secondary thought if Florida wants to decrease the incidence of child abuse. In the long run, prevention reduces harm to children and increases state efficiency.

Statewide and Local Advocacy Councils (SAC)

The purpose for this section of the bill is to resolve difficulties faced by the SAC in obtaining "client" records in those cases where information may be entitled to them. It is increasingly clear that even when the SAC meets all state and federal requirements for obtaining "client" records from appropriate agencies, the SAC has been refused such records. Further, the SAC reports receiving records that have necessary information redacted from them, such as the address or name of the client for whom a report of abuse or neglect was filed. Some reasons for this include incomplete or out-of-date Interagency Agreements, or a lack of clarity on the part of both the SAC and agencies regarding what information is entitled to be shared.

Still, the SAC would need to meet other federal and state requirements before obtaining records, such as: Social Security Administration's requirement that the disclosure of information on Medicaid patients must be relevant to the administration of the state plan, and must have the consent of the recipient; and HIPAA's requirement that access to records is only permitted for persons with comparable standards of confidentiality.

Problems of access may be better addressed by restating the role of the SAC, clarifying the responsibilities of "client" agencies in cooperating with SAC requests, and standardizing the process through with Interagency Agreements and requests for records are generated.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the welfare of children; amending s. 39.001, F.S.; providing additional purposes of ch. 39, F.S.; revising legislative intent; creating the Office of Child Abuse Prevention within the Executive Office of the Governor; directing the Governor to appoint a director of the office; providing duties and responsibilities of the director; providing procedures for evaluation of child abuse prevention programs; requiring a report to the Governor, Legislature, secretaries of certain state agencies, and certain committees of the Legislature; providing for information to be included in the report; providing for the development and implementation of a state plan for the coordination of child abuse prevention programs and services; establishing a Child Abuse Prevention Advisory Council; providing for membership, duties, and responsibilities; requiring requests for funding to be based on the state plan; providing for review and revision of the state plan; granting rulemaking authority to the Executive Office of the Governor; requiring the Legislature to evaluate the office by a specified date; amending s. 39.0014, F.S.; providing responsibilities of the office under ch. 39, F.S.; amending s. 39.01, F.S.; providing and revising definitions; amending s. 39.202, F.S.; providing access to records for agencies that provide early intervention and prevention services; amending ss. 39.0015 and 39.302, F.S.; conforming cross-references; amending s. 402.164,

F.S.; establishing legislative intent for the statewide and local advocacy councils; amending s. 402.165, F.S.; providing guidelines for selection of the executive director of the Florida Statewide Advocacy Council; establishing a process for investigating reports of abuse; revising council meeting requirements; providing requirements for interagency agreements; requiring interagency agreements to be renewed annually and submitted to the Governor by a specified date; amending s. 409.1451, F.S., relating to independent living transition services; revising eligibility requirements for certain young adults; revising duties of the Department of Children and Family Services regarding independent living transition services; including additional parties in the review of a child's academic performance; requiring the department or a community-based care lead agency under contract with the department to develop a plan for delivery of such services; requiring additional aftercare support services; providing additional qualifications to receive an award under the Road-to-Independence Program; providing procedures for the payment of awards; requiring collaboration between certain parties in the development of a plan regarding the provision of transitional services; requiring a community-based care lead agency to develop a plan for purchase and delivery of such services and requiring department approval prior to implementation; permitting the Independent Living Services Advisory Council to have access to certain data held by the

department and certain agencies; amending s. 409.175, F.S.; revising the definition of the term "boarding school" to require such schools to meet certain standards within a specified timeframe; amending ss. 39.013, 39.701, and 1009.25, F.S.; conforming references to changes made by the act; providing an appropriation; providing an effective date.

WHEREAS, in 2002, Florida was among only three other states and the District of Columbia to have the highest national child maltreatment rate, and

WHEREAS, during 2002, 142,547 investigations of abuse or neglect, involving 254,856 children, were completed, approximately one-half of which were substantiated or indicated the presence of abuse or neglect, and

WHEREAS, a Florida child is abused or neglected every 4 minutes and 10,000 Florida children are abused or neglected per month, and

WHEREAS, in 2004, according to the Florida Child Abuse Death Review Team, at least 111 Florida children died from abuse or neglect at the hands of their parents or caretakers, an average rate of two dead children each week, and

WHEREAS, according to the Centers for Disease Control and Prevention, the cost of failing to prevent child abuse and neglect in 2001 equaled $94 billion a year nationally, and

WHEREAS, the direct costs of failing to prevent child abuse and neglect include the costs associated with the utilization of law enforcement services, the health care system, the mental

health system, the child welfare system, and the judicial system, while the indirect costs include the provision of special education and mental health and health care, a rise in the incidence of juvenile delinquency, lost productivity to society, and adult criminality, and

WHEREAS, although prevention of child maltreatment will save lives and conserve resources, and despite the potential long-term benefit of preventing child abuse and neglect, only a small percentage of all resources specifically earmarked for child maltreatment in the state are actually devoted to the prevention of child maltreatment, and

WHEREAS, the 2005-2006 General Appropriations Act provided a total funding of $44 million for child abuse prevention and intervention to the Department of Children and Family Services, which amount represents less than 2 percent of the department's budget, and

WHEREAS, Healthy Families Florida is a community-based, voluntary home visiting program that received approximately $28.4 million for the 2005-2006 fiscal year from the Department of Children and Family Services and contracts with 37 community-based organizations to provide services in targeted high-risk areas in 23 counties and to provide services in 30 total counties, and

WHEREAS, Healthy Families Florida participants had 20 percent less child maltreatment than all families in the Healthy Families Florida target service areas in spite of the fact that, in general, participants are at a significantly higher risk for child maltreatment than the overall population, and

WHEREAS, the Department of Children and Family Services, the Department of Education, the Department of Health, the Department of Juvenile Justice, the Department of Law Enforcement, the Agency for Persons with Disabilities, and the Agency for Workforce Innovation all have programs that focus on primary and secondary prevention of child abuse and neglect, but there is no statewide coordination or single state agency responsible for oversight of these programs, and

WHEREAS, a statewide coordinated effort would result in better communication among agencies and provide for easier access and more efficiency in the delivery of abuse and neglect services in the communities, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (6) of section 39.001, Florida Statutes, are amended, subsections (7) and (8) are renumbered as subsections (8) and (9) and amended, present subsection (9) is renumbered as subsection (10), and new subsections (7), (11), and (12) are added to that section, to read:

39.001 Purposes and intent; personnel standards and screening.--

(1) PURPOSES OF CHAPTER.--The purposes of this chapter are:

(a) To provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure

secure and safe custody; ~~and~~ to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.

(b) To recognize that most families desire to be competent caregivers and providers for their children and that children achieve their greatest potential when families are able to support and nurture the growth and development of their children. Therefore, the Legislature finds that policies and procedures that provide for prevention and intervention through the department's child protection system should be based on the following principles:

1. The health and safety of the children served shall be of paramount concern.

2. The prevention and intervention should engage families in constructive, supportive, and nonadversarial relationships.

3. The prevention and intervention should intrude as little as possible into the life of the family, be focused on clearly defined objectives, and take the most parsimonious path to remedy a family's problems.

4. The prevention and intervention should be based upon outcome evaluation results that demonstrate success in protecting children and supporting families.

(c) To provide a child protection system that reflects a partnership between the department, other agencies, and local communities.

(d) To provide a child protection system that is sensitive to the social and cultural diversity of the state.

(e) To provide procedures which allow the department to respond to reports of child abuse, abandonment, or neglect in the most efficient and effective manner that ensures the health and safety of children and the integrity of families.

(f) To preserve and strengthen the child's family ties whenever possible, removing the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal.

(g) To ensure that the parent or legal custodian from whose custody the child has been taken assists the department to the fullest extent possible in locating relatives suitable to serve as caregivers for the child.

(h) To ensure that permanent placement with the biological or adoptive family is achieved as soon as possible for every child in foster care and that no child remains in foster care longer than 1 year.

(i) To secure for the child, when removal of the child from his or her own family is necessary, custody, care, and discipline as nearly as possible equivalent to that which should have been given by the parents; and to ensure, in all cases in which a child must be removed from parental custody, that the child is placed in an approved relative home, licensed foster home, adoptive home, or independent living program that provides the most stable and potentially permanent living arrangement for the child, as determined by the court. All placements shall be in a safe environment where drugs and alcohol are not abused.

(j) To ensure that, when reunification or adoption is not possible, the child will be prepared for alternative permanency

goals or placements, to include, but not be limited to, long-term foster care, independent living, custody to a relative on a permanent basis with or without legal guardianship, or custody to a foster parent or legal custodian on a permanent basis with or without legal guardianship.

(k) To make every possible effort, when two or more children who are in the care or under the supervision of the department are siblings, to place the siblings in the same home; and in the event of permanent placement of the siblings, to place them in the same adoptive home or, if the siblings are separated, to keep them in contact with each other.

(l) To provide judicial and other procedures to assure due process through which children, parents, and guardians and other interested parties are assured fair hearings by a respectful and respected court or other tribunal and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the authority and dignity of the courts are adequately protected.

(m) To ensure that children under the jurisdiction of the courts are provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement. It is the further intent of the Legislature that, when children are removed from their homes, disruption to their education be minimized to the extent possible.

(n) To create and maintain an integrated prevention framework that enables local communities, state agencies, and

organizations to collaborate to implement efficient and properly applied evidence-based child abuse prevention practices.

(6) LEGISLATIVE INTENT FOR THE PREVENTION OF ABUSE, ABANDONMENT, AND NEGLECT OF CHILDREN.--The incidence of known child abuse, abandonment, and neglect has increased rapidly over the past 5 years. The impact that abuse, abandonment, or neglect has on the victimized child, siblings, family structure, and inevitably on all citizens of the state has caused the Legislature to determine that the prevention of child abuse, abandonment, and neglect shall be a priority of this state. To further this end, it is the intent of the Legislature that an Office of Child Abuse Prevention be established ~~a comprehensive approach for the prevention of abuse, abandonment, and neglect of children be developed for the state and that this planned, comprehensive approach be used as a basis for funding~~.

(7) OFFICE OF CHILD ABUSE PREVENTION.--

(a) For purposes of establishing a comprehensive statewide approach for the prevention of child abuse, abandonment, and neglect, the Office of Child Abuse Prevention is created within the Executive Office of the Governor. The Governor shall appoint a director for the office who shall be subject to confirmation by the Senate.

(b) The director shall:

1. Formulate and recommend rules pertaining to implementation of child abuse prevention efforts.

2. Act as the Governor's liaison with state agencies, other state governments, and the public and private sectors on matters that relate to child abuse prevention.

3. Work to secure funding and other support for the state's child abuse prevention efforts, including, but not limited to, establishing cooperative relationships among state and private agencies.

4. Develop a strategic program and funding initiative that links the separate jurisdictional activities of state agencies with respect to child abuse prevention. The office may designate lead and contributing agencies to develop such initiatives.

5. Advise the Governor and the Legislature on child abuse trends in this state, the status of current child abuse prevention programs and services, the funding of those programs and services, and the status of the office with regard to the development and implementation of the state child abuse prevention strategy.

6. Develop child abuse prevention public awareness campaigns to be implemented throughout the state.

(c) The office is authorized and directed to:

1. Oversee the preparation and implementation of the state plan established under subsection (8) and revise and update the state plan as necessary.

2. Conduct, otherwise provide for, or make available continuing professional education and training in the prevention of child abuse and neglect.

3. Work to secure funding in the form of appropriations, gifts, and grants from the state, the Federal Government, and other public and private sources in order to ensure that sufficient funds are available for prevention efforts.

4. Make recommendations pertaining to agreements or contracts for the establishment and development of:

a. Programs and services for the prevention of child abuse and neglect.

b. Training programs for the prevention of child abuse and neglect.

c. Multidisciplinary and discipline-specific training programs for professionals with responsibilities affecting children, young adults, and families.

5. Monitor, evaluate, and review the development and quality of local and statewide services and programs for the prevention of child abuse and neglect and shall publish and distribute an annual report of its findings on or before January 1 of each year to the Governor, the Speaker of the House of Representatives, the President of the Senate, the secretary of each state agency affected by the report, and the appropriate substantive committees of the Legislature. The report shall include:

a. A summary of the activities of the office.

b. A summary detailing the demographic and geographic characteristics of families served by the prevention programs.

c. Recommendations, by state agency, for the further development and improvement of services and programs for the prevention of child abuse and neglect.

d. The budget requests and prevention program needs by state agency.

(8) ~~(7)~~ PLAN FOR COMPREHENSIVE APPROACH.--

(a) The office ~~department~~ shall develop a state plan for the prevention of abuse, abandonment, and neglect of children and shall submit the state plan to the Speaker of the House of Representatives, the President of the Senate, and the Governor no later than December 31, 2007 ~~January 1, 1983~~. The Department of Children and Family Services, the Department of Corrections, the Department of Education, the Department of Health, the Department of Juvenile Justice, the Department of Law Enforcement, the Agency for Persons with Disabilities, and the Agency for Workforce Innovation ~~The Department of Education and the Division of Children's Medical Services Prevention and Intervention of the Department of Health~~ shall participate and fully cooperate in the development of the state plan at both the state and local levels. Furthermore, appropriate local agencies and organizations shall be provided an opportunity to participate in the development of the state plan at the local level. Appropriate local groups and organizations shall include, but not be limited to, community mental health centers; guardian ad litem programs for children under the circuit court; the school boards of the local school districts; the Florida local advocacy councils; community-based care lead agencies; private or public organizations or programs with recognized expertise in working with child abuse prevention programs for children and families; private or public organizations or programs with recognized expertise in working with children who are sexually abused, physically abused, emotionally abused, abandoned, or neglected and with expertise in working with the families of such children; private or public programs or organizations with

expertise in maternal and infant health care; multidisciplinary child protection teams; child day care centers; law enforcement agencies;~~,~~ and the circuit courts, when guardian ad litem programs are not available in the local area. The state plan to be provided to the Legislature and the Governor shall include, as a minimum, the information required of the various groups in paragraph (b).

(b) The development of the ~~comprehensive~~ state plan shall be accomplished in the following manner:

1. The office shall establish a Child Abuse Prevention Advisory Council composed of representatives from each state agency and appropriate local agencies and organizations specified in paragraph (a). The advisory council shall serve as the research arm of the office and ~~The department shall establish an interprogram task force comprised of the Program Director for Family Safety, or a designee, a representative from the Child Care Services Program Office, a representative from the Family Safety Program Office, a representative from the Mental Health Program Office, a representative from the Substance Abuse Program Office, a representative from the Developmental Disabilities Program Office, and a representative from the Division of Children's Medical Services Prevention and Intervention of the Department of Health. Representatives of the Department of Law Enforcement and of the Department of Education shall serve as ex officio members of the interprogram task force. The interprogram task force~~ shall be responsible for:

a. Assisting in developing a plan of action for better coordination and integration of the goals, activities, and

funding pertaining to the prevention of child abuse, abandonment, and neglect conducted by the office ~~department~~ in order to maximize staff and resources at the state level. The plan of action shall be included in the state plan.

b. Assisting in providing a basic format to be utilized by the districts in the preparation of local plans of action in order to provide for uniformity in the district plans and to provide for greater ease in compiling information for the state plan.

c. Providing the districts with technical assistance in the development of local plans of action, if requested.

d. Assisting in examining the local plans to determine if all the requirements of the local plans have been met and, if they have not, informing the districts of the deficiencies and requesting the additional information needed.

e. Assisting in preparing the state plan for submission to the Legislature and the Governor. Such preparation shall include the incorporation into the state plan ~~collapsing~~ of information obtained from the local plans, the cooperative plans with the members of the advisory council ~~Department of Education~~, and the plan of action for coordination and integration of state departmental activities ~~into one comprehensive plan~~. The state ~~comprehensive~~ plan shall include a section reflecting general conditions and needs, an analysis of variations based on population or geographic areas, identified problems, and recommendations for change. In essence, the state plan shall provide an analysis and summary of each element of the local

plans to provide a statewide perspective. The state plan shall also include each separate local plan of action.

f. Conducting a feasibility study on the establishment of a Children's Cabinet.

g.~~f.~~ Working with the specified state agency in fulfilling the requirements of subparagraphs 2., 3., 4., and 5.

2. The office, the department, the Department of Education, and the Department of Health shall work together in developing ways to inform and instruct parents of school children and appropriate district school personnel in all school districts in the detection of child abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect, and in caring for a child's needs after a report is made. The plan for accomplishing this end shall be included in the state plan.

3. The office, the department, the Department of Law Enforcement, and the Department of Health shall work together in developing ways to inform and instruct appropriate local law enforcement personnel in the detection of child abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect.

4. Within existing appropriations, the office ~~department~~ shall work with other appropriate public and private agencies to emphasize efforts to educate the general public about the problem of and ways to detect child abuse, abandonment, and neglect and in the proper action that should be taken in a

suspected case of child abuse, abandonment, or neglect. The plan for accomplishing this end shall be included in the state plan.

5. The office, the department, the Department of Education, and the Department of Health shall work together on the enhancement or adaptation of curriculum materials to assist instructional personnel in providing instruction through a multidisciplinary approach on the identification, intervention, and prevention of child abuse, abandonment, and neglect. The curriculum materials shall be geared toward a sequential program of instruction at the four progressional levels, K-3, 4-6, 7-9, and 10-12. Strategies for encouraging all school districts to utilize the curriculum are to be included in the ~~comprehensive~~ state plan for the prevention of child abuse, abandonment, and neglect.

6. Each district of the department shall develop a plan for its specific geographical area. The plan developed at the district level shall be submitted to the advisory council ~~interprogram task force~~ for utilization in preparing the state plan. The district local plan of action shall be prepared with the involvement and assistance of the local agencies and organizations listed in this paragraph ~~(a)~~, as well as representatives from those departmental district offices participating in the treatment and prevention of child abuse, abandonment, and neglect. In order to accomplish this, the office ~~district administrator in each district~~ shall establish a task force on the prevention of child abuse, abandonment, and neglect. The office ~~district administrator~~ shall appoint the members of the task force in accordance with the membership

requirements of this section. The office ~~In addition, the district administrator shall ensure that each subdistrict is represented on the task force; and, if the district does not have subdistricts, the district administrator~~ shall ensure that both urban and rural areas are represented on the task force. The task force shall develop a written statement clearly identifying its operating procedures, purpose, overall responsibilities, and method of meeting responsibilities. The district plan of action to be prepared by the task force shall include, but shall not be limited to:

a. Documentation of the magnitude of the problems of child abuse, including sexual abuse, physical abuse, and emotional abuse, and child abandonment and neglect in its geographical area.

b. A description of programs currently serving abused, abandoned, and neglected children and their families and a description of programs for the prevention of child abuse, abandonment, and neglect, including information on the impact, cost-effectiveness, and sources of funding of such programs.

c. A continuum of programs and services necessary for a comprehensive approach to the prevention of all types of child abuse, abandonment, and neglect as well as a brief description of such programs and services.

d. A description, documentation, and priority ranking of local needs related to child abuse, abandonment, and neglect prevention based upon the continuum of programs and services.

e. A plan for steps to be taken in meeting identified needs, including the coordination and integration of services to

avoid unnecessary duplication and cost, and for alternative funding strategies for meeting needs through the reallocation of existing resources, utilization of volunteers, contracting with local universities for services, and local government or private agency funding.

f. A description of barriers to the accomplishment of a comprehensive approach to the prevention of child abuse, abandonment, and neglect.

g. Recommendations for changes that can be accomplished only at the state program level or by legislative action.

(9) ~~(8)~~ FUNDING AND SUBSEQUENT PLANS.--

(a) All budget requests submitted by the office, the department, the Department of Health, the Department of Education, the Department of Juvenile Justice, the Department of Corrections, the Agency for Persons with Disabilities, the Agency for Workforce Innovation, or any other agency to the Legislature for funding of efforts for the prevention of child abuse, abandonment, and neglect shall be based on the state plan developed pursuant to this section.

(b) The office ~~department at the state and district levels~~ and the other agencies and organizations listed in paragraph (8)(a) ~~(7)(a)~~ shall readdress the state plan and make necessary revisions every 5 years, at a minimum. Such revisions shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than June 30 of each year divisible by 5. At least biennially, the office shall review the state plan and make any necessary revisions based on changing needs and program evaluation results. An annual progress report

shall be submitted to update the state plan in the years between the 5-year intervals. In order to avoid duplication of effort, these required plans may be made a part of or merged with other plans required by either the state or Federal Government, so long as the portions of the other state or Federal Government plan that constitute the state plan for the prevention of child abuse, abandonment, and neglect are clearly identified as such and are provided to the Speaker of the House of Representatives and the President of the Senate as required above.

(11) RULEMAKING.--The Executive Office of the Governor shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

(12) EVALUATION.--By February 1, 2009, the Legislature shall evaluate the office and determine whether it should continue to be housed in the Executive Office of the Governor or transferred to a state agency.

Section 2. Section 39.0014, Florida Statutes, is amended to read:

39.0014 Responsibilities of public agencies.--All state, county, and local agencies shall cooperate, assist, and provide information to the Office of Child Abuse Prevention ~~department~~ as will enable it to fulfill its responsibilities under this chapter.

Section 3. Paragraph (b) of subsection (3) of section 39.0015, Florida Statutes, is amended to read:

39.0015 Child abuse prevention training in the district school system.--

(3) DEFINITIONS.--As used in this section:

(b) "Child abuse" means those acts as defined in ss. 39.01(1), (2), (30), (43), (45), (53) ~~(52)~~, and (64) ~~(63)~~, 827.04, and 984.03(1), (2), and (37).

Section 4. Subsections (47) through (72) of section 39.01, Florida Statutes, are renumbered as subsections (48) through (73), present subsections (10) and (47) are amended, and a new subsection (47) is added to that section, to read:

39.01 Definitions.--When used in this chapter, unless the context otherwise requires:

(10) "Caregiver" means the parent, legal custodian, adult household member, or other person responsible for a child's welfare as defined in subsection (48) ~~(47)~~.

(47) "Office" means the Office of Child Abuse Prevention within the Executive Office of the Governor.

(48) ~~(47)~~ "Other person responsible for a child's welfare" includes the child's legal guardian, legal custodian, or foster parent; an employee of any ~~a private~~ school, public or private child day care center, residential home, institution, facility, or agency; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmental investigative jurisdiction, this definition does not include law enforcement officers, or employees of municipal or county detention facilities or the Department of Corrections, while acting in an official capacity.

Section 5. Paragraph (a) of subsection (2) of section 39.202, Florida Statutes, is amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.--

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, or county agencies responsible for carrying out:

1. Child or adult protective investigations;

2. Ongoing child or adult protective services;

3. Early intervention and prevention services;

4.~~3.~~ Healthy Start services; ~~or~~

5.~~4.~~ Licensure or approval of adoptive homes, foster homes, or child care facilities, or family day care homes or informal child care providers who receive subsidized child care funding, or other homes used to provide for the care and welfare of children; or~~.~~

6.~~5.~~ Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

Section 6. Subsection (1) of section 39.302, Florida Statutes, is amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.--

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(31) or (48) ~~(47)~~, acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established by the central abuse hotline pursuant to s. 39.201(5) and orally notify the appropriate state attorney, law enforcement agency, and licensing agency. These agencies shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations onsite or having face-to-face interviews with the child, such investigation visits shall be unannounced unless it is determined by the department or its agent that such unannounced visits would threaten the safety of the child. When a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation shall be entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an onsite visit of the child's place of residence. In all cases, the department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible,

with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in such report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

Section 7. Subsection (1) of section 402.164, Florida Statutes, is amended to read:

402.164 Legislative intent; definitions.--

(1)(a) It is the intent of the Legislature to use citizen volunteers as members of the Florida Statewide Advocacy Council and the Florida local advocacy councils, and to have volunteers operate a network of councils that shall, without interference by an executive agency, undertake to discover, monitor, investigate, and determine the presence of conditions or individuals that constitute a threat to the rights, health, safety, or welfare of persons who receive services from state agencies.

(b) It is the further intent of the Legislature that the monitoring and investigation shall safeguard the health, safety, and welfare of consumers of services provided by these state agencies.

(c) It is the further intent of the Legislature that state agencies cooperate with the councils in forming interagency agreements to provide the councils with authorized client

records so that the councils may monitor services and investigate claims.

Section 8. Subsections (5) and (7) of section 402.165, Florida Statutes, are amended to read:

402.165 Florida Statewide Advocacy Council; confidential records and meetings.--

(5)(a) Members of the statewide council shall receive no compensation, but are entitled to be reimbursed for per diem and travel expenses in accordance with s. 112.061.

(b) The Governor shall select an executive director who shall serve at the pleasure of the Governor and shall perform the duties delegated to him or her by the council. The compensation of the executive director and staff shall be established in accordance with the rules of the Selected Exempt Service. The Governor shall give priority consideration in the selection of an executive director to an individual with professional expertise in research design, statistical analysis, or agency evaluation and analysis.

(c) The council may apply for, receive, and accept grants, gifts, donations, bequests, and other payments including money or property, real or personal, tangible or intangible, and service from any governmental or other public or private entity or person and make arrangements as to the use of same.

(d) The statewide council shall annually prepare a budget request that, after it is approved by the council, shall be submitted to the Governor. The budget shall include a request for funds to carry out the activities of the statewide council and the local councils.

(7) The responsibilities of the statewide council include, but are not limited to:

(a) Serving as an independent third-party mechanism for protecting the constitutional and human rights of clients within programs or facilities operated, funded, or contracted by any state agency that provides client services.

(b) Monitoring, by site visit and through access to records, the delivery and use of services, programs, or facilities operated, funded, or contracted by any state agency that provides client services, for the purpose of preventing abuse or deprivation of the constitutional and human rights of clients. The statewide council may conduct an unannounced site visit or monitoring visit that involves the inspection of records if the visit is conditioned upon a complaint. A complaint may be generated by the council itself, after consulting with the Governor's office, if information from any state agency that provides client services or from other sources indicates a situation at the program or facility that indicates possible abuse or neglect or deprivation of the constitutional and human rights of clients. The statewide council shall establish and follow uniform criteria for the review of information and generation of complaints. The statewide council shall develop a written protocol for all complaints it generates to provide the Governor's office with information including the nature of the abuse or neglect, the agencies involved, the populations or numbers of individuals affected, the types of records necessary to complete the investigation, and a strategy for approaching the problem. Routine program monitoring and

reviews that do not require an examination of records may be made unannounced.

(c) Receiving, investigating, and resolving reports of abuse or deprivation of constitutional and human rights referred to the statewide council by a local council. If a matter constitutes a threat to the life, safety, or health of clients or is multiservice-area in scope, the statewide council may exercise its powers without the necessity of a referral from a local council.

(d) Reviewing existing programs or services and new or revised programs of the state agencies that provide client services and making recommendations as to how the rights of clients are affected.

(e) Submitting an annual report to the Legislature, no later than December 30 of each calendar year, concerning activities, recommendations, and complaints reviewed or developed by the council during the year.

(f) Conducting meetings at least one time ~~six times~~ a year at the call of the chair and at other times at the call of the Governor or by written request of eight ~~six~~ members of the council including the executive director.

(g) Developing and adopting uniform procedures to be used to carry out the purpose and responsibilities of the statewide council and the local councils.

(h) Supervising the operations of the local councils and monitoring the performance and activities of all local councils and providing technical assistance to members of local councils.

(i) Providing for the development and presentation of a standardized training program for members of local councils.

(j) Developing and maintaining interagency agreements between the council and the state agencies providing client services. The interagency agreements shall address the coordination of efforts and identify the roles and responsibilities of the statewide and local councils and each agency in fulfillment of their responsibilities, including access to records. The interagency agreements shall explicitly define a process that the statewide and local councils shall use to request records from the agency and shall define a process for appeal when disputes about access to records arise between staff and council members. Interagency agreements shall be renewed annually and shall be completed and reported to the Governor no later than February 1.

Section 9. Section 409.1451, Florida Statutes, is amended to read:

409.1451 Independent living transition services.--

(1) SYSTEM OF SERVICES.--

(a) The Department of Children and Family Services, its agents, or community-based providers operating pursuant to s. 409.1671 shall administer a system of independent living transition services to enable older children in foster care and young adults who exit foster care at age 18 to make the transition to self-sufficiency as adults.

(b) The goals of independent living transition services are to assist older children in foster care and young adults who were formerly in foster care to obtain life skills and education

for independent living and employment, to have a quality of life appropriate for their age, and to assume personal responsibility for becoming self-sufficient adults.

(c) State funds for foster care or federal funds shall be used to establish a continuum of services for eligible children in foster care and eligible young adults who were formerly in foster care which accomplish the goals for the system of independent living transition services by providing services for foster children, pursuant to subsection (4), and services for young adults who were formerly in foster care, pursuant to subsection (5).

(d) For children in foster care, independent living transition services are not an alternative to adoption. Independent living transition services may occur concurrently with continued efforts to locate and achieve placement in adoptive families for older children in foster care.

(2) ELIGIBILITY.--

(a) The department shall serve children who have reached 13 years of age but are not yet 18 years of age and who are in foster care by providing services pursuant to subsection (4). Children to be served must meet the eligibility requirements set forth for specific services as provided in this section.

(b) The department shall serve young adults who have reached 18 years of age or were placed with a court-approved nonrelative or guardian after reaching 16 years of age and have spent a minimum of 6 months in foster care ~~but are not yet 23 years of age and who were in foster care when they turned 18 years of age~~ by providing services pursuant to subsection (5).

Young adults are not entitled to be served but must meet the eligibility requirements set forth for specific services in this section.

(3) PREPARATION FOR INDEPENDENT LIVING.--

(a) It is the intent of the Legislature for the Department of Children and Family Services to assist older children in foster care and young adults who exit foster care at age 18 in making the transition to independent living and self-sufficiency as adults. The department shall provide such children and young adults with opportunities to participate in life skills activities in their foster families and communities which are reasonable and appropriate for their respective ages or for any special needs they may have~~,~~ and shall provide them with services to build life ~~the~~ skills and increase their ability to live independently and become self-sufficient. To support the provision of opportunities for participation in age-appropriate life skills activities, the department shall:

1. Develop a list of age-appropriate activities and responsibilities to be offered to all children involved in independent living transition services and their foster parents.

2. Provide training for staff and foster parents to address the issues of older children in foster care in transitioning to adulthood, which shall include information on high school completion, grant applications, vocational school opportunities, supporting education and employment opportunities, and ~~providing~~ opportunities to participate in appropriate daily activities.

3. Develop procedures to maximize the authority of foster parents or caregivers to approve participation in age-appropriate activities of children in their care. The age-appropriate activities and the authority of the foster parent or caregiver shall be developed into a written plan that the foster parent or caregiver, the child, and the case manager all develop together, sign, and follow. This plan must include specific goals and objectives and be reviewed and updated no less than quarterly.

4. Provide opportunities for older children in foster care to interact with mentors.

5. Develop and implement procedures for older children to directly access and manage the personal allowance they receive from the department in order to learn responsibility and participate in age-appropriate life skills activities to the extent feasible.

6. Make a good faith effort to fully explain, prior to execution of any signature, if required, any document, report, form, or other record, whether written or electronic, presented to a child or young adult pursuant to this chapter and allow for the recipient to ask any appropriate questions necessary to fully understand the document. It shall be the responsibility of the person presenting the document to the child or young adult to comply with this subparagraph.

(b) It is further the intent of the Legislature that each child in foster care, his or her foster parents, if applicable, and the department or community-based provider set early achievement and career goals for the child's postsecondary

educational and work experience. The department and community-based providers shall implement the model set forth in this paragraph to help ensure that children in foster care are ready for postsecondary education and the workplace.

1. For children in foster care who have reached 13 years of age, ~~entering the 9th grade, their foster parents, and~~ the department or community-based provider shall ensure that the child's case plan includes an educational and career path ~~be active participants in choosing a post high school goal~~ based upon both the abilities and interests of each child. The child, the foster parents, and a teacher or other school staff member shall be included to the fullest extent possible in developing the path. The path shall be reviewed at each judicial hearing as part of the case plan and ~~goal~~ shall accommodate the needs of children served in exceptional education programs to the extent appropriate for each individual. Such children may continue to follow the courses outlined in the district school board student progression plan. Children in foster care, with the assistance of their foster parents, and the department or community-based provider shall choose one of the following postsecondary goals:

a. Attending a 4-year college or university, a community college plus university, or a military academy;

b. Receiving a 2-year postsecondary degree;

c. Attaining a postsecondary career and technical certificate or credential; or

d. Beginning immediate employment, including apprenticeship, after completion of a high school diploma or its equivalent, or enlisting in the military.

2. In order to assist the child in foster care in achieving his or her chosen goal, the department or community-based provider shall, with the participation of the child and foster parents, identify:

a. The core courses necessary to qualify for a chosen goal.

b. Any elective courses which would provide additional help in reaching a chosen goal.

c. The grade point requirement and any additional information necessary to achieve a specific goal.

d. A teacher, other school staff member, employee of the department or community-based care provider, or community volunteer who would be willing to work with the child as an academic advocate or mentor if foster parent involvement is insufficient or unavailable.

3. In order to complement educational goals, the department and community-based providers are encouraged to form partnerships with the business community to support internships, apprenticeships, or other work-related opportunities.

4. The department and community-based providers shall ensure that children in foster care and their foster parents are made aware of the postsecondary goals available and shall assist in identifying the coursework necessary to enable the child to reach the chosen goal.

(c) All children in foster care and young adults formerly in foster care are encouraged to take part in learning opportunities that result from participation in community service activities.

(d) Children in foster care and young adults formerly in foster care shall be provided with the opportunity to change from one postsecondary goal to another, and each postsecondary goal shall allow for changes in each individual's needs and preferences. Any change, particularly a change that will result in additional time required to achieve a goal, shall be made with the guidance and assistance of the department or community-based provider.

(4) SERVICES FOR CHILDREN IN FOSTER CARE.--The department shall provide the following transition to independence services to children in foster care who meet prescribed conditions and are determined eligible by the department. The service categories available to children in foster care which facilitate successful transition into adulthood are:

(a) Preindependent living services.--

1. Preindependent living services include, but are not limited to, life skills training, educational field trips, and conferences. The specific services to be provided to a child shall be determined using a preindependent living assessment.

2. A child who has reached 13 years of age but is not yet 15 years of age who is in foster care is eligible for such services.

3. The department shall conduct an annual staffing for each child who has reached 13 years of age but is not yet 15 years of age to ensure that the preindependent living training and services to be provided as determined by the preindependent living assessment are being received and to evaluate the

progress of the child in developing the needed independent living skills.

4. At the first annual staffing that occurs following a child's 14th birthday, and at each subsequent staffing, the department or community-based provider shall ensure that the child's case plan includes an educational and career path based upon both the abilities and interests of each child and shall provide to each child detailed personalized information on services provided by the Road-to-Independence ~~Scholarship~~ Program, including requirements for eligibility; on other grants, scholarships, and waivers that are available and should be sought by the child with assistance from the department, including, but not limited to, the Bright Futures Scholarship Program, as provided in ss. 1009.53-1009.538; on application deadlines; and on grade requirements for such programs.

5. Information related to both the preindependent living assessment and all staffings, which shall be reduced to writing and signed by the child participant, shall be included as a part of the written report required to be provided to the court at each judicial review held pursuant to s. 39.701.

(b) Life skills services.--

1. Life skills services may include, but are not limited to, independent living skills training, including training to develop banking and budgeting skills, interviewing skills, parenting skills, and time management or organizational skills, educational support, employment training, and counseling. Children receiving these services should also be provided with information related to social security insurance benefits and

public assistance. The specific services to be provided to a child shall be determined using an independent life skills assessment.

2. A child who has reached 15 years of age but is not yet 18 years of age who is in foster care is eligible for such services.

3. The department shall conduct a staffing at least once every 6 months for each child who has reached 15 years of age but is not yet 18 years of age to ensure that the appropriate independent living training and services as determined by the independent life skills assessment are being received and to evaluate the progress of the child in developing the needed independent living skills.

4. The department shall provide to each child in foster care during the calendar month following the child's 17th birthday an independent living assessment to determine the child's skills and abilities to live independently and become self-sufficient. Based on the results of the independent living assessment, services and training shall be provided in order for the child to develop the necessary skills and abilities prior to the child's 18th birthday.

5. Information related to both the independent life skills assessment and all staffings, which shall be reduced to writing and signed by the child participant, shall be included as a part of the written report required to be provided to the court at each judicial review held pursuant to s. 39.701.

(c) Subsidized independent living services.--

1. Subsidized independent living services are living arrangements that allow the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175.

2. A child who has reached 16 years of age but is not yet 18 years of age is eligible for such services if he or she:

a. Is adjudicated dependent under chapter 39; has been placed in licensed out-of-home care for at least 6 months prior to entering subsidized independent living; and has a permanency goal of adoption, independent living, or long-term licensed care; and

b. Is able to demonstrate independent living skills, as determined by the department, using established procedures and assessments.

3. Independent living arrangements established for a child must be part of an overall plan leading to the total independence of the child from the department's supervision. The plan must include, but need not be limited to, a description of the skills of the child and a plan for learning additional identified skills; the behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities, as appropriate; a plan for future educational, vocational, and training skills; present financial and budgeting capabilities and a plan for improving resources and ability; a description of the proposed residence; documentation that the child understands the specific consequences of his or her conduct in the independent living program; documentation of proposed services to be provided by

the department and other agencies, including the type of service and the nature and frequency of contact; and a plan for maintaining or developing relationships with the family, other adults, friends, and the community, as appropriate.

4. Subsidy payments in an amount established by the department may be made directly to a child under the direct supervision of a caseworker or other responsible adult approved by the department.

(5) SERVICES FOR YOUNG ADULTS FORMERLY IN FOSTER CARE.--Based on the availability of funds, the department shall provide or arrange for the following services to young adults formerly in foster care who meet the prescribed conditions and are determined eligible by the department. The department, or a community-based care lead agency when the agency is under contract with the department to provide the services described under this subsection, shall develop a plan to implement those services. A plan shall be developed for each community-based care service area in the state. Each plan that is developed by a community-based care lead agency shall be submitted to the department. Each plan shall include the number of young adults to be served each month of the fiscal year and specify the number of young adults who will reach 18 years of age who will be eligible for the plan and the number of young adults who will reach 23 years of age and will be ineligible for the plan or who are otherwise ineligible during each month of the fiscal year; staffing requirements and all related costs to administer the services and program; expenditures to or on behalf of the eligible recipients; costs of services provided to young adults

through an approved plan for housing, transportation, and employment; reconciliation of these expenses and any additional related costs with the funds allocated for these services; and an explanation of and a plan to resolve any shortages or surpluses in order to end the fiscal year with a balanced budget. The categories of services available to assist a young adult formerly in foster care to achieve independence are:

(a) Aftercare support services.--

1. Aftercare support services are available to assist young adults who were formerly in foster care in their efforts to continue to develop the skills and abilities necessary for independent living. The aftercare support services available include, but are not limited to, the following:

a. Mentoring and tutoring.

b. Mental health services and substance abuse counseling.

c. Life skills classes, including credit management and preventive health activities.

d. Parenting classes.

e. Job and career skills training.

f. Counselor consultations.

g. Temporary financial assistance.

h. Financial literacy skills training.

The specific services to be provided under this subparagraph shall be determined by an aftercare services assessment and may be provided by the department or through referrals in the community.

2. Temporary assistance provided to prevent homelessness shall be provided as expeditiously as possible and within the limitations defined by the department.

3.~~2.~~ A young adult who has reached 18 years of age but is not yet 23 years of age who leaves foster care at 18 years of age but who requests services prior to reaching 23 years of age is eligible for such services.

(b) Road-to-Independence ~~Scholarship~~ Program.--

1. The Road-to-Independence ~~Scholarship~~ Program is intended to help eligible students who are former foster children in this state to receive the educational and vocational training needed to achieve independence. The amount of the award shall be based on the living and educational needs of the young adult and may be up to, but may not exceed, the amount of earnings that the student would have been eligible to earn working a 40-hour-a-week federal minimum wage job.

2. A young adult who has reached 18 years of age but is not yet 21 years of age is eligible for the initial award, and a young adult under 23 years of age is eligible for renewal awards, if he or she:

a. Was a dependent child, under chapter 39, and was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday or is currently in licensed foster care or subsidized independent living, was adopted from foster care after reaching 16 years of age, or, after spending at least 6 months in the custody of the department after reaching 16 years of age, was placed in a guardianship by the court;

b. Spent at least 6 months living in foster care before reaching his or her 18th birthday;

c. Is a resident of this state as defined in s. 1009.40; and

d. Meets one of the following qualifications:

(I) Has earned a standard high school diploma or its equivalent as described in s. 1003.43 or s. 1003.435, or has earned a special diploma or special certificate of completion as described in s. 1003.438, and has been admitted for full-time enrollment in an eligible postsecondary education institution as defined in s. 1009.533;

(II) Is enrolled full time in an accredited high school; or

(III) Is enrolled full time in an accredited adult education program designed to provide the student with a high school diploma or its equivalent.

3. A young adult applying for the ~~a~~ Road-to-Independence Program ~~Scholarship~~ must apply for any other grants and scholarships for which he or she may qualify. The department shall assist the young adult in the application process and may use the federal financial aid grant process to determine the funding needs of the young adult.

4. An award shall be available to a young adult who is considered a full-time student or its equivalent by the educational institution in which he or she is enrolled, unless that young adult has a recognized disability preventing full-time attendance. The amount of the award, whether it is being used by a young adult working toward completion of a high school

diploma or its equivalent or working toward completion of a postsecondary education program, shall be determined based on an assessment of the funding needs of the young adult. This assessment must consider the young adult's living and educational costs and other grants, scholarships, waivers, earnings, and other income to be received by the young adult. An award shall be available only to the extent that other grants and scholarships are not sufficient to meet the living and educational needs of the young adult, but an award may not be less than $25 in order to maintain Medicaid eligibility for the young adult as provided in s. 409.903.

5.a. The department must advertise the criteria, application procedures, and availability of the program to:

(I) Children and young adults in, leaving, or formerly in foster care.

(II) Case managers.

(III) Guidance and family services counselors.

(IV) Principals or other relevant school administrators ~~and must ensure that the children and young adults leaving foster care, foster parents, or family services counselors are informed of the availability of the program and the application procedures~~.

b. A young adult must apply for the initial award during the 6 months immediately preceding his or her 18th birthday, and the department shall provide assistance with the application process. A young adult who fails to make an initial application, but who otherwise meets the criteria for an initial award, may make one application for the initial award if the application is

made before the young adult's 21st birthday. If the young adult does not apply for an initial award before his or her 18th birthday, the department shall inform that young adult of the opportunity to apply before turning 21 years of age.

c. ~~If funding for the program is available,~~ The department shall issue awards from the ~~scholarship~~ program for each young adult who meets all the requirements of the program to the extent funding is available.

d. An award shall be issued at the time the eligible student reaches 18 years of age.

e. A young adult who is eligible for the Road-to-Independence Program, transitional support services, or aftercare services and who so desires shall be allowed to reside with the licensed foster family or group care provider with whom he or she was residing at the time of attaining his or her 18th birthday or to reside in another licensed foster home or with a group care provider arranged by the department.

f. If the award recipient transfers from one eligible institution to another and continues to meet eligibility requirements, the award must be transferred with the recipient.

g. ~~Scholarship~~ Funds awarded to any eligible young adult under this program are in addition to any other services or funds provided to the young adult by the department through transitional support services or aftercare services ~~its independent living transition services~~.

h. The department shall provide information concerning young adults receiving funding through the Road-to-Independence Program ~~Scholarship~~ to the Department of Education for inclusion

in the student financial assistance database, as provided in s. 1009.94.

i. ~~Scholarship~~ Funds are intended to help eligible young adults ~~students~~ who are former foster children in this state to receive the educational and vocational training needed to become independent and self-supporting. The funds shall be terminated when the young adult has attained one of four postsecondary goals under subsection (3) or reaches 23 years of age, whichever occurs earlier. In order to initiate postsecondary education, to allow for a change in career goal, or to obtain additional skills in the same educational or vocational area, a young adult may earn no more than two diplomas, certificates, or credentials. A young adult attaining an associate of arts or associate of science degree shall be permitted to work toward completion of a bachelor of arts or a bachelor of science degree or an equivalent undergraduate degree. Road-to-Independence Program ~~Scholarship~~ funds may not be used for education or training after a young adult has attained a bachelor of arts or a bachelor of science degree or an equivalent undergraduate degree.

j. The department shall evaluate and renew each award annually during the 90-day period before the young adult's birthday. In order to be eligible for a renewal award for the subsequent year, the young adult must:

(I) Complete the number of hours, or the equivalent considered full time by the educational institution, unless that young adult has a recognized disability preventing full-time attendance, in the last academic year in which the young adult

earned an award ~~a scholarship~~, except for a young adult who meets the requirements of s. 1009.41.

(II) Maintain appropriate progress as required by the educational institution, except that, if the young adult's progress is insufficient to renew the award ~~scholarship~~ at any time during the eligibility period, the young adult may restore eligibility by improving his or her progress to the required level.

k. ~~Scholarship~~ Funds may be terminated during the interim between an award and the evaluation for a renewal award if the department determines that the award recipient is no longer enrolled in an educational institution as defined in sub-subparagraph 2.d., or is no longer a state resident. The department shall notify a recipient ~~student~~ who is terminated and inform the recipient ~~student~~ of his or her right to appeal.

1. An award recipient who does not qualify for a renewal award or who chooses not to renew the award may subsequently apply for reinstatement. An application for reinstatement must be made before the young adult reaches 21 ~~23~~ years of age, and a student may not apply for reinstatement more than once. In order to be eligible for reinstatement, the young adult must meet the eligibility criteria and the criteria for award renewal for the ~~scholarship~~ program.

(c) Transitional support services.--

1. In addition to any services provided through aftercare support or the Road-to-Independence Program ~~Scholarship~~, a young adult formerly in foster care may receive other appropriate short-term funding and services, which may include financial,

housing, counseling, employment, education, mental health, disability, and other services, if the young adult demonstrates that the services are critical to the young adult's own efforts to achieve self-sufficiency and to develop a personal support system. The department or community-based care provider shall work with the young adult in developing a joint transition plan that is consistent with a needs assessment identifying the specific need for transitional services to support the young adult's own efforts. The young adult must have specific tasks to complete or maintain included in the plan and be accountable for the completion of or making progress towards the completion of these tasks. If the young adult and the department or community-based care provider cannot come to agreement regarding any part of the plan, the young adult may access a grievance process to its full extent in an effort to resolve the disagreement.

2. A young adult formerly in foster care is eligible to apply for transitional support services if he or she has reached 18 years of age but is not yet 23 years of age, was a dependent child pursuant to chapter 39, was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday, and had spent at least 6 months living in foster care before that date.

3. If at any time the services are no longer critical to the young adult's own efforts to achieve self-sufficiency and to develop a personal support system, they shall be terminated.

(d) Payment of aftercare, Road-to-Independence Program ~~scholarship~~, or transitional support funds.--

1. Payment of aftercare, Road-to-Independence Program ~~scholarship~~, or transitional support funds shall be made directly to the recipient unless the recipient requests in writing to the community-based care lead agency, or the department, that the payments or a portion of the payments be made directly on the recipient's behalf in order to secure services such as housing, counseling, education, or employment training as part of the young adult's own efforts to achieve self-sufficiency.

2. After the completion of aftercare support services that satisfy the requirements of sub-subparagraph (a)1.h., payment of awards under the Road-to-Independence Program shall be made by direct deposit to the recipient, unless the recipient requests in writing to the community-based care lead agency or the department that:

a. The payments be made directly to the recipient by check or warrant;

b. The payments or a portion of the payments be made directly on the recipient's behalf to institutions the recipient is attending to maintain eligibility under this section; or

c. The payments be made on a two-party check to a business or landlord for a legitimate expense, whether reimbursed or not. A legitimate expense for the purposes of this sub-subparagraph shall include automobile repair or maintenance expenses; educational, job, or training expenses; and costs incurred, except legal costs, fines, or penalties, when applying for or executing a rental agreement for the purposes of securing a home or residence.

3. The community-based care lead agency may purchase housing, transportation, or employment services to ensure the availability and affordability of specific transitional services thereby allowing an eligible young adult to utilize these services in lieu of receiving a direct payment. Prior to purchasing such services, the community-based care lead agency must have a plan approved by the department describing the services to be purchased, the rationale for purchasing the services, and a specific range of expenses for each service that is less than the cost of purchasing the service by an individual young adult. The plan must include a description of the transition of a young adult using these services into independence and a timeframe for achievement of independence. An eligible young adult who can demonstrate an ability to obtain these services independently and prefers a direct payment shall receive such payment. The plan must be reviewed annually and evaluated for cost-efficiency and for effectiveness in assisting young adults in achieving independence, preventing homelessness among young adults, and enabling young adults to earn a livable wage in a permanent employment situation.

4. The young adult who resides with a foster family may not be included as a child in calculating any licensing restriction on the number of children in the foster home.

(e) Appeals process.--

1. The Department of Children and Family Services shall adopt by rule a procedure by which a young adult may appeal an eligibility determination or the department's failure to provide aftercare, Road-to-Independence Program ~~scholarship~~, or

transitional support services, or the termination of such services, if such funds are available.

2. The procedure developed by the department must be readily available to young adults, must provide timely decisions, and must provide for an appeal to the Secretary of Children and Family Services. The decision of the secretary constitutes final agency action and is reviewable by the court as provided in s. 120.68.

(6) ACCOUNTABILITY.--The department shall develop outcome measures for the program and other performance measures.

(7) INDEPENDENT LIVING SERVICES ADVISORY COUNCIL.--The Secretary of Children and Family Services shall establish the Independent Living Services Advisory Council for the purpose of reviewing and making recommendations concerning the implementation and operation of the independent living transition services. This advisory council shall continue to function as specified in this subsection until the Legislature determines that the advisory council can no longer provide a valuable contribution to the department's efforts to achieve the goals of the independent living transition services.

(a) Specifically, the advisory council shall assess the implementation and operation of the system of independent living transition services and advise the department on actions that would improve the ability of the independent living transition services to meet the established goals. The advisory council shall keep the department informed of problems being experienced with the services, barriers to the effective and efficient integration of services and support across systems, and

successes that the system of independent living transition services has achieved. The department shall consider, but is not required to implement, the recommendations of the advisory council.

(b) The advisory council shall report to the appropriate substantive committees of the Senate and the House of Representatives on the status of the implementation of the system of independent living transition services; efforts to publicize the availability of aftercare support services, the Road-to-Independence ~~Scholarship~~ Program, and transitional support services; ~~specific barriers to financial aid created by the scholarship and possible solutions;~~ the success of the services; problems identified; recommendations for department or legislative action; and the department's implementation of the recommendations contained in the Independent Living Services Integration Workgroup Report submitted to the Senate and the House substantive committees December 31, 2002. This advisory council report shall be submitted by December 31 of each year that the council is in existence and shall be accompanied by a report from the department which identifies the recommendations of the advisory council and either describes the department's actions to implement these recommendations or provides the department's rationale for not implementing the recommendations.

(c) Members of the advisory council shall be appointed by the secretary of the department. The membership of the advisory council must include, at a minimum, representatives from the headquarters and district offices of the Department of Children and Family Services, community-based care lead agencies, the

Agency for Workforce Innovation, the Department of Education, the Agency for Health Care Administration, the State Youth Advisory Board, Workforce Florida, Inc., the Statewide Guardian Ad Litem Office, foster parents, recipients of Road-to-Independence Program funding, and advocates for foster children. The secretary shall determine the length of the term to be served by each member appointed to the advisory council, which may not exceed 4 years.

(d) The Department of Children and Family Services shall provide administrative support to the Independent Living Services Advisory Council to accomplish its assigned tasks. The advisory council shall be afforded access to all appropriate data from the department, each community-based care lead agency, and other relevant agencies in order to accomplish the tasks set forth in this section. The data collected may not include any information that would identify a specific child or young adult.

(8) PERSONAL PROPERTY.--Property acquired on behalf of clients of this program shall become the personal property of the clients and is not subject to the requirements of chapter 273 relating to state-owned tangible personal property. Such property continues to be subject to applicable federal laws.

(9) MEDICAL ASSISTANCE FOR YOUNG ADULTS FORMERLY IN FOSTER CARE.--The department shall enroll in the Florida KidCare program, outside the open enrollment period, each young adult who is eligible as described in paragraph (2)(b) and who has not yet reached his or her 20th ~~19th~~ birthday.

(a) A young adult who was formerly in foster care at the time of his or her 18th birthday and who is 18 years of age but

not yet 20 ~~19,~~ shall pay the premium for the Florida KidCare program as required in s. 409.814.

(b) A young adult who has health insurance coverage from a third party through his or her employer or who is eligible for Medicaid is not eligible for enrollment under this subsection.

(10) RULEMAKING.--The department shall adopt by rule procedures to administer this section, including balancing the goals of normalcy and safety for the youth and providing the caregivers with as much flexibility as possible to enable the youth to participate in normal life experiences. The department shall not adopt rules relating to reductions in ~~scholarship~~ awards. The department shall engage in appropriate planning to prevent, to the extent possible, a reduction in ~~scholarship~~ awards after issuance.

Section 10. Paragraph (b) of subsection (2) of section 409.175, Florida Statutes, is amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.--

(2) As used in this section, the term:

(b) "Boarding school" means a school which is accredited by the Florida Council of Independent Schools or the Southern Association of Colleges and Schools; which is accredited by the Council on Accreditation, the Commission on Accreditation of Rehabilitation Facilities, or the Coalition for Residential Education; and which is registered with the Department of Education as a school. Its program must follow established school schedules, with holiday breaks and summer recesses in

accordance with other public and private school programs. The children in residence must customarily return to their family homes or legal guardians during school breaks and must not be in residence year-round, except that this provision does not apply to foreign students. The parents of these children retain custody and planning and financial responsibility. A boarding school currently in existence and a boarding school opening and seeking accreditation has 3 years to comply with the requirements of this paragraph. A boarding school must provide proof of accreditation or documentation of the accreditation process upon request. A boarding school that cannot produce the required documentation or that has not registered with the Department of Education shall be considered to be providing residential group care without a license. The department may impose administrative sanctions or seek civil remedies as provided under paragraph (11)(a).

Section 11. Subsection (2) of section 39.013, Florida Statutes, is amended to read:

39.013 Procedures and jurisdiction; right to counsel.--

(2) The circuit court shall have exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed or when a child is taken into the custody of the department. The circuit court may assume

jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was in the physical or legal custody of no person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age. However, if a youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday for the purpose of determining whether appropriate aftercare support, Road-to-Independence Program ~~Scholarship~~, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday. If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction

terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

Section 12. Paragraph (a) of subsection (6) of section 39.701, Florida Statutes, is amended to read:

39.701 Judicial review.--

(6)(a) In addition to paragraphs (1)(a) and (2)(a), the court shall hold a judicial review hearing within 90 days after a youth's 17th birthday and shall continue to hold timely judicial review hearings. In addition, the court may review the status of the child more frequently during the year prior to the youth's 18th birthday if necessary. At each review held under this subsection, in addition to any information or report provided to the court, the foster parent, legal custodian, guardian ad litem, and the child shall be given the opportunity to address the court with any information relevant to the child's best interests, particularly as it relates to independent living transition services. In addition to any information or report provided to the court, the department shall include in its judicial review social study report written verification that the child:

1. Has been provided with a current Medicaid card and has been provided all necessary information concerning the Medicaid program sufficient to prepare the youth to apply for coverage upon reaching age 18, if such application would be appropriate.

2. Has been provided with a certified copy of his or her birth certificate and, if the child does not have a valid driver's license, a Florida identification card issued under s. 322.051.

3. Has been provided information relating to Social Security Insurance benefits if the child is eligible for these benefits. If the child has received these benefits and they are being held in trust for the child, a full accounting of those funds must be provided and the child must be informed about how to access those funds.

4. Has been provided with information and training related to budgeting skills, interviewing skills, and parenting skills.

5. Has been provided with all relevant information related to the Road-to-Independence Program ~~Scholarship~~, including, but not limited to, eligibility requirements, forms necessary to apply, and assistance in completing the forms. The child shall also be informed that, if he or she is eligible for the Road-to-Independence ~~Scholarship~~ Program, he or she may reside with the licensed foster family or group care provider with whom the child was residing at the time of attaining his or her 18th birthday or may reside in another licensed foster home or with a group care provider arranged by the department.

6. Has an open bank account, or has identification necessary to open an account, and has been provided with essential banking skills.

7. Has been provided with information on public assistance and how to apply.

8. Has been provided a clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and what educational program or school he or she will be enrolled in.

9. Has been provided with notice of the youth's right to petition for the court's continuing jurisdiction for 1 year after the youth's 18th birthday as specified in s. 39.013(2) and with information on how to obtain access to the court.

10. Has been encouraged to attend all judicial review hearings occurring after his or her 17th birthday.

Section 13. Paragraph (c) of subsection (2) of section 1009.25, Florida Statutes, is amended to read:

1009.25 Fee exemptions.--

(2) The following students are exempt from the payment of tuition and fees, including lab fees, at a school district that provides postsecondary career programs, community college, or state university:

(c) A student who ~~the state has determined is eligible for the Road to Independence Scholarship, regardless of whether an award is issued or not, or a student who~~ is or was at the time he or she reached 18 years of age in the custody of the Department of Children and Family Services or a relative under s. 39.5085, ~~or~~ who is adopted from the Department of Children and Family Services after May 5, 1997, or who, after spending at least 6 months in the custody of the department after reaching 16 years of age, was placed in a guardianship by the court. Such exemption includes fees associated with enrollment in career-preparatory instruction and completion of the college-level

communication and computation skills testing program. Such an exemption is available to any student who was in the custody of a relative under s. 39.5085 at the time he or she reached 18 years of age or was adopted from the Department of Children and Family Services after May 5, 1997; however, the exemption remains valid for no more than 4 years after the date of graduation from high school.

Section 14. The sum of $11.4 million in recurring funds is appropriated from the General Revenue Fund to the Ounce of Prevention Fund of Florida for the 2006-2007 fiscal year to fund the expansion and enhancement of the Healthy Families Florida program statewide. Of that amount, $4.3 million shall be used for cost-of-living increases to retain home visiting staff, $3.1 million shall be used to serve the 14 counties that are not presently served, and $4 million shall be used to add high-risk specialists to the core staffing model for each Healthy Families Florida project.

Section 15. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7181 PCB STA 06-02 State Planning & Budgeting
SPONSOR(S): State Administration Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1716

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: State Administration Appropriations Committee	8 Y, 0 N	Belcher	Belcher
1) Fiscal Council		Overton	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Last year the Legislature adopted Senate Joint Resolution 2144 (SJR) which proposes to amend Section 19 of Article III of the State Constitution relating to state planning and budgeting. The SJR establishes the Joint Legislative Budget Commission (commission) in the Florida Constitution, directs the commission to issue a long-range financial outlook setting out fiscal strategies for the state, and creates the Government Efficiency Task Force.

The bill implements the SJR by revising statutes relating to the Legislative Budget Commission. The commission will continue to operate essentially as it does now. Membership remains at 7 Senators and 7 Representatives. The chair of the commission will be appointed in alternate years by the President of the Senate and the vice chair appointed by the Speaker of the House of Representatives (instead of the chairs of the appropriations committees serving as chair and vice chair); in alternate years, appointing authority is reversed.

The bill directs the commission to develop a long-range 3-year financial outlook which will be updated each year with the assistance of each state agency providing information to support the commission's development and updates of the long-range financial outlook. The bill prescribes a plan to ensure an integrated state planning and budget process to assure consistency between the agency's long-range plan and the agency's legislative budget request.

The bill also creates a Government Efficiency Task Force in 2007, and every 4 years thereafter, composed of legislators and private sector appointees, to make recommendations to improve government and reduce costs.

The bill clarifies that the Financial Estimating Conference is subject to the legislative rules of notice and openness to the public.

The bill takes effect upon the effective date of the amendment to the State Constitution contained in Senate Joint Resolution 2144, or a similar constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill implements the SJR which creates the Joint Legislative Budget Commission and the Government Efficiency Task Force.

B. EFFECT OF PROPOSED CHANGES:

The Legislative Budget Commission (commission) was created in 2000 primarily to consider budget amendments proposed by the Governor and to conduct zero-based budget reviews of state agencies. Its authority has been expanded since then to encompass a number of actions that require legislative review during the interim between sessions. The most significant expansion of the commission's authority occurred in 2001 when it was required to consider more budget amendments, including those amendments increasing or transferring trust fund budget authority in excess of $1 million.

Currently, the commission is not charged with the responsibility or duty to issue a long-range financial outlook setting out fiscal strategies for the state and its departments and agencies to assist the legislature in making policy and budget decisions.

This bill conforms current statutes concerning the commission to the provisions of Senate Joint Resolution 2144.

The commission will continue to operate essentially as it does now. Membership remains at 7 Senators and 7 Representatives. The chairperson of the commission will be appointed by the President of the Senate and the vice chairperson appointed by the Speaker of the House of Representatives (instead of the chairs of the appropriations committees); in alternate years, the chairperson of the commission will be appointed by the Speaker of the House of Representatives and the vice chairperson appointed by the President of the Senate. The commission will convene at the call of the presiding officers (instead of the chair and vice chair). A quorum will continue to be a majority of the members from each house plus one additional member of either house. The commission will be staffed by legislative staff (instead of appropriations committee staff).

The commission will have the power and duty to:

- review and approve budget amendments proposed by the Governor or the Chief Justice of the Supreme Court as provided in Chapter 216, F.S.;
- develop the long-range financial outlook required by the Senate Joint Resolution; and
- exercise all other powers and perform any other duties prescribed by the Legislature.

The bill creates the Government Efficiency Task Force. The task force will convene no later than January of 2007, and each fourth year thereafter. The task force will be composed of 15 members. Five members each will be appointed by the President of the Senate, Speaker of the House of Representatives, and Governor. Members of the task force may include private sector representatives. The joint task force will elect a chair from among its members. The joint task force will meet at least quarterly at the call of the chair and may conduct its meetings through teleconferences or other similar means. Task force staff will be assigned by the Governor, the President of the Senate, and the Speaker of the House of Representatives. The task force will develop recommendations for improving governmental operations and reducing costs and complete its work within one year. The task force may submit all or part of its recommendations at any time during the year but a final report summarizing its recommendations must be submitted at the completion of its work to the chair and vice-chair of the Legislative Budget Commission, the Governor, and the Chief Justice of the Supreme Court.

The bill amends s. 29.0095, F.S., to require the legislative appropriations committees, instead of the commission, to set the format for budget expenditure reports.

The bill amends s. 100.371, F.S., to clarify that the Financial Estimating Conference is a part of the legislative branch and, as such, is subject to the legislative rules of notice and openness to the public.

The bill amends s. 216.011, F.S., to narrow the definition of "consultation" with the Governor to include only fiscal matters. In addition "long-range financial outlook" is defined consistent with the requirements of the Senate Joint Resolution as a document issued by the commission based on a 3-year forecast of revenues and expenditures.

The bill amends s. 216.012, F.S., to require the commission to develop the long-range financial outlook and update the outlook each year. The commission will issue the final financial outlook by September 15 but may provide any additions or adjustments based on information not previously available.

The bill amends s. 216.023, F.S., to require that the legislative budget instructions provide for consistency between agency long-range plans and agency legislative budget requests.

The bill amends s. 216.065, F.S., to require that the commission and legislative appropriations committees be provided a fiscal impact statement that details the effect of any action taken by the Governor, Governor and Cabinet, state agency, or statutorily authorized entity, that will affect revenues, require a request for an increased or new appropriation in the following 3 fiscal years, or transfer current years funds, before such action is taken.

The bill amends s. 216.162, F.S., to require that the Governor's recommended budget be furnished to the Legislature at least 30 days before the scheduled annual legislative session or such later date as is requested by the Governor and approved in writing by the President of the Senate and the Speaker of the House of Representatives.

The bill amends s.216.178, F.S., to extend the time for the production of the final budget report to 120 days after the beginning of the fiscal year. The final budget report reflects net appropriations for each budget item, as well as expenditures, revenues, and cash balances for the prior two years and estimated expenditures, revenues, and cash balances for the current year.

C. SECTION DIRECTORY:

Section 1: Amends s. 11.90, F.S., membership, rules, powers, and duties of the Legislative Budget Commission.

Section 2: Creates s. 11.91, F.S., creating the Government Efficiency Task Force.

Section 3: Amends s. 2.0095, F.S., to provide the appropriations committees of the Senate and the House shall prescribe the format of the report required by the section instead of the LBC.

Section 4: Amends s. 100.371, F.S., as amended by s. 28 of ch. 2005-278, Laws of Florida, to clarify that the Financial Estimating Conference is a part of the legislative branch.

Section 5: Amends s. 216.011, F.S., to amend the definition of "consultation" and to provide the definition of "long-range financial outlook."

Section 6: Creates s. 216.012, F.S., to provide the duties of the LBC and the agencies in creating the long-range financial outlook.

Section 7: Amends s. 216.023, F.S., to provide requirements for legislative budget requests and legislative budget request instructions.

Section 8: Amends s. 216.065, F.S., to provide requirements for fiscal impact statements on actions affecting the budget.

Section 9: Amends s. 216.162, F.S., to provide the time the Governor's recommended balanced budget for the state shall be submitted to the legislature.

Section 10: Amends s.216.178, F.S., to extend the time for the production of the final budget report to 120 days after the beginning of the fiscal year.

Section 11: Provides that the bill will take effect on the effective date of Senate Joint Resolution 2005-2144.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   There will be indeterminate costs associated with meetings of the Government Efficiency Task Force for member travel and per diem.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to state planning and budgeting; amending s. 11.90, F.S.; revising the membership of the Legislative Budget Commission; providing for the appointment of presiding officers; revising requirements for meetings and a quorum; revising requirements for appointing the staff of the commission; requiring the commission to review budget amendments recommended by the Governor or Chief Justice; authorizing the commission to perform other duties prescribed by the Legislature; creating s. 11.91, F.S.; creating the Government Efficiency Task Force for the purpose of recommending improvements to governmental operations and cost reductions; providing for the Governor, the President of the Senate, and the Speaker of the House of Representatives to appoint its members; requiring that the task force meet at 4-year intervals beginning on a specified date; authorizing the task force to conduct meetings through teleconferences; providing for members to be reimbursed for per diem and travel expenses; requiring the task force to complete its work within 1 year and report to the Legislative Budget Commission, the Governor, and the Chief Justice of the Supreme Court; amending s. 29.0095, F.S.; requiring the legislative appropriations committees to prescribe the format of budget expenditure reports; amending s. 100.371, F.S.; specifying that the Financial Impact Estimating Conference is within the legislative branch of government and under the direction of the President of the Senate and the

Speaker of the House of Representatives; revising provisions governing public meetings of the conference; amending s. 216.011, F.S.; redefining the term "consultation" and defining the term "long-range financial outlook" for purposes of state fiscal affairs; creating s. 216.012, F.S.; providing requirements for the long-range financial outlook prepared by the Legislative Budget Commission; requiring state agencies to provide certain information; prescribing authority of the commission with respect to such information; specifying timeframes for the commission in completing the long-range financial outlook; amending s. 216.023, F.S.; clarifying certain requirements for legislative budget instructions; amending s. 216.065, F.S.; requiring that fiscal impact statements be provided to the Legislative Budget Commission in addition to the legislative appropriations committees; requiring that such statements contain information concerning subsequent fiscal years; amending s. 216.162, F.S.; revising the date for the Governor's recommended budget to be furnished to the Legislature; authorizing the presiding officers of the Legislature to approve submission of the Governor's recommended budget at a later date than otherwise required; amending s. 216.178, F.S.; extending the deadline for production of the final budget; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 11.90, Florida Statutes, is amended to read:

11.90 Legislative Budget Commission.--

(1) There is created the Legislative Budget Commission, which is the joint Legislative Budget Commission created in s. 19, Art. III of the State Constitution, composed of seven members of the Senate appointed by the President of the Senate and seven members of the House of Representatives appointed by the Speaker of the House of Representatives. Each member shall serve at the pleasure of the officer who appointed the member. A vacancy on the commission shall be filled in the same manner as the original appointment. From November of each odd-numbered year through October of each even-numbered year, the chairperson of the commission shall be appointed by the President of the Senate and the vice chairperson of the commission shall be appointed by the Speaker of the House of Representatives. From November of each even-numbered year through October of each odd-numbered year, the chairperson of the commission shall be appointed by the Speaker of the House of Representatives and the vice chairperson of the commission shall be appointed by the President of the Senate. ~~There is created a standing joint committee of the Legislature designated the Legislative Budget Commission, composed of 14 members as follows: seven members of the Senate appointed by the President of the Senate, to include the chair of the Senate Budget Committee or its successor, and seven members of the House of Representatives appointed by the Speaker of the House of Representatives, to include the chair of the Fiscal Responsibility Council or its successor.~~ The terms of

members shall be for 2 years and shall run from the organization of one Legislature to the organization of the next Legislature. ~~Vacancies occurring during the interim period shall be filled in the same manner as the original appointment. During even-numbered years, the chair of the commission shall be the chair of the Senate Budget Committee or its successor, and the vice chair of the commission shall be the chair of the House Fiscal Responsibility Council or its successor. During odd-numbered years, the chair of the commission shall be the chair of the House Fiscal Responsibility Council or its successor, and the vice chair of the commission shall be the chair of the Senate Budget Committee or its successor.~~

(2) The Legislative Budget Commission shall be governed by joint rules of the Senate and the House of Representatives which shall remain in effect until repealed or amended by concurrent resolution.

(3) The commission shall convene at the call of the President of the Senate and the Speaker of the House of Representatives at least quarterly. A majority of the commission members of each house plus one additional member from either house constitutes a quorum. ~~The commission shall meet at least quarterly and more frequently at the direction of the presiding officers or upon call of the chair. A quorum shall consist of a majority of members from each house, plus one additional member from either house.~~ Action by the commission requires a majority vote of the members present of each house.

(4) The commission may conduct its meetings through teleconferences or other similar means.

(5) The commission shall be staffed by legislative staff members, as assigned by the President of the Senate and the Speaker of the House of Representatives. ~~The commission will be jointly staffed by the appropriations committees of the House of Representatives and the Senate. During even numbered years, the Senate will serve as lead staff, and during odd numbered years, the House of Representatives will serve as lead staff.~~

(6) The commission shall have the power and duty to:

(a) Review and approve or disapprove budget amendments recommended by the Governor or the Chief Justice of the Supreme Court as provided in chapter 216. ~~Annually review the amount of state debt outstanding and submit to the President of the Senate and the Speaker of the House of Representatives an estimate of the maximum amount of additional state tax supported debt that prudently may be authorized during the current fiscal year. The estimate shall be advisory and shall in no way bind the Legislature.~~

(b) Develop the long-range financial outlook described in s. 19, Art. III of the State Constitution. ~~Promptly after receiving the report required by s. 215.98(2)(c), the commission shall submit to the President of the Senate and the Speaker of the House of Representatives the commission's estimate of tax-supported debt which prudently may be authorized for the next fiscal year, together with a report explaining the basis for the estimate.~~

In addition to the powers and duties specified in this subsection, the commission shall exercise all other powers and

perform any other duties prescribed by the Legislature.

(7) The commission shall review information resources management needs identified in agency long-range program plans for consistency with the State Annual Report on Enterprise Resource Planning and Management and statewide policies adopted by the State Technology Office. The commission shall also review proposed budget amendments associated with information technology that involve more than one agency, that have an outcome that impacts another agency, or that exceed $500,000 in total cost over a 1-year period.

Section 2. Section 11.91, Florida Statutes, is created to read:

11.91 Government Efficiency Task Force.--

(1) There is created the Government Efficiency Task Force. The task force shall convene no later than January 2007, and each 4th year thereafter. The task force shall be composed of 15 members. Five members shall be appointed by the President of the Senate, five members shall be appointed by the Speaker of the House of Representatives, and five members shall be appointed by the Governor. Members of the task force may include representatives from the private sector, as designated by the President of the Senate, the Speaker of the House of Representatives, and the Governor. Each member shall serve at the pleasure of the officer who appointed the member. A vacancy on the task force shall be filled in the same manner as the original appointment. The terms of the members shall be for 1 year.

(2) The task force shall elect a chair from among its

members.

(3) The task force shall meet as necessary, but at least quarterly, at the call of the chair and at the time and place designated by him or her. The task force may conduct its meetings through teleconferences or other similar means.

(4) Members of the task force are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.

(5) The task force shall develop recommendations for improving governmental operations and reducing costs. Staff to assist the task force in performing its duties shall be assigned by the President of the Senate, the Speaker of the House of Representatives, and the Governor. The task force shall consider reports issued by the Auditor General, the Office of Program Policy Analysis and Government Accountability, and agency inspectors general in developing its recommendations.

(6) The task force shall complete its work within 1 year and submit its recommendations to the chairperson and vice chairperson of the Legislative Budget Commission, the Governor, and the Chief Justice of the Supreme Court. The task force may submit all or part of its recommendations at any time during the year, but a final report summarizing its recommendations must be submitted at the completion of its work.

Section 3. Subsection (4) of section 29.0095, Florida Statutes, is amended to read:

29.0095 Budget expenditure reports.--

(4) The appropriations committees of the Senate and the House of Representatives ~~Legislative Budget Commission~~ shall

prescribe the format of the report required by this section in consultation with the Chief Justice and the Justice Administrative Commission.

Section 4. Subsection (5) of section 100.371, Florida Statutes, as amended by section 28 of chapter 2005-278, Laws of Florida, is amended to read:

100.371 Initiatives; procedure for placement on ballot.--

(5)(a) Within 45 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, the Financial Impact Estimating Conference shall complete an analysis and financial impact statement to be placed on the ballot of the estimated increase or decrease in any revenues or costs to state or local governments resulting from the proposed initiative. The Financial Impact Estimating Conference shall submit the financial impact statement to the Attorney General and Secretary of State.

(b)~~1.~~ The Financial Impact Estimating Conference shall provide an opportunity for any proponents or opponents of the initiative to submit information and may solicit information or analysis from any other entities or agencies, including the Office of Economic and Demographic Research.

(c) All meetings of the Financial Impact Estimating Conference shall be open to the public ~~as provided in chapter 286~~. The President of the Senate and the Speaker of the House of Representatives, jointly, shall be the sole judge for the interpretation, implementation, and enforcement of this subsection.

1.~~2.~~ The Financial Impact Estimating Conference is established to review, analyze, and estimate the financial impact of amendments to or revisions of the State Constitution proposed by initiative. The Financial Impact Estimating Conference shall consist of four principals: one person from the Executive Office of the Governor; the coordinator of the Office of Economic and Demographic Research, or his or her designee; one person from the professional staff of the Senate; and one person from the professional staff of the House of Representatives. Each principal shall have appropriate fiscal expertise in the subject matter of the initiative. A Financial Impact Estimating Conference may be appointed for each initiative.

2.~~3.~~ Principals of the Financial Impact Estimating Conference shall reach a consensus or majority concurrence on a clear and unambiguous financial impact statement, no more than 75 words in length, and immediately submit the statement to the Attorney General. Nothing in this subsection prohibits the Financial Impact Estimating Conference from setting forth a range of potential impacts in the financial impact statement. Any financial impact statement that a court finds not to be in accordance with this section shall be remanded solely to the Financial Impact Estimating Conference for redrafting. The Financial Impact Estimating Conference shall redraft the financial impact statement within 15 days.

3.~~4.~~ If the members of the Financial Impact Estimating Conference are unable to agree on the statement required by this subsection, or if the Supreme Court has rejected the initial

submission by the Financial Impact Estimating Conference and no redraft has been approved by the Supreme Court by 5 p.m. on the 75th day before the election, the following statement shall appear on the ballot pursuant to s. 101.161(1): "The financial impact of this measure, if any, cannot be reasonably determined at this time."

(d) ~~(c)~~ The financial impact statement must be separately contained and be set forth after the ballot summary as required in s. 101.161(1).

(e) ~~(d)~~ 1. Any financial impact statement that the Supreme Court finds not to be in accordance with this subsection shall be remanded solely to the Financial Impact Estimating Conference for redrafting, provided the court's advisory opinion is rendered at least 75 days before the election at which the question of ratifying the amendment will be presented. The Financial Impact Estimating Conference shall prepare and adopt a revised financial impact statement no later than 5 p.m. on the 15th day after the date of the court's opinion.

2. If, by 5 p.m. on the 75th day before the election, the Supreme Court has not issued an advisory opinion on the initial financial impact statement prepared by the Financial Impact Estimating Conference for an initiative amendment that otherwise meets the legal requirements for ballot placement, the financial impact statement shall be deemed approved for placement on the ballot.

3. In addition to the financial impact statement required by this subsection, the Financial Impact Estimating Conference shall draft an initiative financial information statement. The

initiative financial information statement should describe in greater detail than the financial impact statement any projected increase or decrease in revenues or costs that the state or local governments would likely experience if the ballot measure were approved. If appropriate, the initiative financial information statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. The initiative financial information statement must include both a summary of not more than 500 words and additional detailed information that includes the assumptions that were made to develop the financial impacts, workpapers, and any other information deemed relevant by the Financial Impact Estimating Conference.

4. The Department of State shall have printed, and shall furnish to each supervisor of elections, a copy of the summary from the initiative financial information statements. The supervisors shall have the summary from the initiative financial information statements available at each polling place and at the main office of the supervisor of elections upon request.

5. The Secretary of State and the Office of Economic and Demographic Research shall make available on the Internet each initiative financial information statement in its entirety. In addition, each supervisor of elections whose office has a website shall post the summary from each initiative financial information statement on the website. Each supervisor shall include the Internet addresses for the information statements on the Secretary of State's and the Office of Economic and

Demographic Research's websites in the publication or mailing required by s. 101.20.

Section 5. Paragraph (h) of subsection (1) of section 216.011, Florida Statutes, is amended, and paragraph (tt) is added to that subsection, to read:

216.011 Definitions.--

(1) For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets, each of the following terms has the meaning indicated:

(h) "Consultation" means communication to allow government officials and agencies to deliberate and to seek and provide advice in an open and forthright manner ~~with the full committee, a subcommittee thereof, the chair, or the staff as deemed appropriate by the chair of the respective appropriations committee~~.

(tt) "Long-range financial outlook" means a document issued by the Legislative Budget Commission based on a 3-year forecast of revenues and expenditures.

Section 6. Section 216.012, Florida Statutes, is created to read:

216.012 Long-range financial outlook.--

(1) The commission shall develop a long-range 3-year financial outlook and shall update that outlook each year.

(2) Each state agency shall provide information to the commission, based on the commission's direction, which supports the commission's development and updates of the long-range financial outlook. The commission has the authority to accept, modify, or direct the agency to modify any information received

from an agency.

(3) By September 15 of each year, the commission shall complete the long-range financial outlook. The commission may subsequently provide any additions or adjustments to the outlook based on information not previously available.

Section 7. Subsection (12) of section 216.023, Florida Statutes, is amended to read:

216.023 Legislative budget requests to be furnished to Legislature by agencies.--

(12) In order to ensure an integrated state planning and budgeting process, the agency long-range plan should be reviewed by the Legislature. The legislative budget request instructions must provide for consistency between the agency's long-range plan and the agency's legislative budget request.

Section 8. Section 216.065, Florida Statutes, is amended to read:

216.065 Fiscal impact statements on actions affecting the budget.--In addition to the applicable requirements of chapter 120, before the Governor, or Governor and Cabinet as a body, performing any constitutional or statutory duty, or before any state agency or statutorily authorized entity takes any final action that will affect revenues, require a request for an increased or new appropriation in the following 3 fiscal years ~~year~~, or transfer current year funds, it shall first provide the joint Legislative Budget Commission and the legislative appropriations committees with a fiscal impact statement that details the effects of such action on the budget. The fiscal impact statement must specify the estimated budget and revenue

impacts for the current year and the 2 subsequent fiscal years at the same level of detail required to support a legislative budget request, including amounts by appropriation category and fund.

Section 9. Subsection (1) of section 216.162, Florida Statutes, is amended to read:

216.162 Governor's recommended budget to be furnished Legislature; copies to members.--

(1) At least 30 days before the scheduled annual legislative session, or at a later date if requested by the Governor and approved in writing by the President of the Senate and the Speaker of the House of Representatives, the Governor shall furnish each senator and representative a copy of his or her recommended balanced budget for the state, based on the Governor's own conclusions and judgment~~; however, in his or her first year in office a new Governor may request, subject to approval of the President of the Senate and the Speaker of the House of Representatives, that his or her recommended balanced budget be submitted at a later time prior to the Governor's first regular legislative session~~.

Section 10. Subsection (2) of section 216.178, Florida Statutes, is amended to read:

216.178 General Appropriations Act; format; procedure.--

(2) The Office of Planning and Budgeting shall develop a final budget report that reflects the net appropriations for each budget item. The report shall reflect actual expenditures for each of the 2 preceding fiscal years and the estimated expenditures for the current fiscal year. In addition, the

report must contain the actual revenues and cash balances for the preceding 2 fiscal years and the estimated revenues and cash balances for the current fiscal year. The report may also contain expenditure data, program objectives, and program measures for each state agency program. The report must be produced by the 120th day of ~~October 15~~ each fiscal year. A copy of the report must be made available to each member of the Legislature, to the head of each state agency, to the Auditor General, to the director of the Office of Program Policy Analysis and Government Accountability, and to the public.

Section 11. This act shall take effect upon the effective date of the amendment to the State Constitution contained in 2005 Senate Joint Resolution No. 2144, or a similar constitutional amendment, relating to the state budgeting, planning, and appropriations processes.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7189 PCB FT 06-06 State Financial Matters
SPONSOR(S): Finance & Tax Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee	9 Y, 0 N	Levin	Diez-Arguelles
1) Fiscal Council		Hawkins	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill makes a number of changes to the planning and budgeting process, particularly provisions relating to the state's financial accounting policies.

The bill has an effective date of July 1, 2006 unless otherwise indicated.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Planning, Budgeting and Financial Accounting Laws:

Chapter 216, Florida Statutes, the planning and budgeting law, provides guidelines to the Governor, the judicial branch, and state agencies for developing and submitting legislative budget requests and administering legislative appropriations. Chapter 215, Florida Statutes, provides guidelines for the Chief Financial Officer for state financial accounting procedures.

Legislative Budget Requests:

Section 216.023, F.S., outlines the processes each agency must follow in developing its legislative budget request. No later than July 15th of each year, the legislative budget instructions (jointly developed by the Legislature and the Governor's Office) shall be submitted to each state agency and the judicial branch.

Agencies and the judicial branch submit measures with their legislative budget request (LBR) on October 15. Measures are reviewed during the development of the house and senate budgets and then approved by the Legislature with the passage of the General Appropriation Act (GAA). Under the current process all agencies must submit revisions to measures and standards by June 30th following passage of the GAA to reflect changes.

The law requires the legislative budget request to include, among other items, information on expenditures for 3 fiscal years, details on trust funds and fees, and issue narrative justifying changes in amounts and positions requested. In addition, each agency must submit an inventory of all litigation in which the agency is involved that may require additional appropriations.

No later than October 15, the agency head must submit the agency's request to the Legislature and the Governor in the form and manner prescribed in the budget instructions. The request must be based on the agency's independent assessment of need. The judicial branch and the Division of Administrative Hearings must submit the requests directly to the Legislature, with a copy to the Governor, no later than October 15.

The Governor or the chairs of the appropriations committees may request agencies to address major issues. The request regarding such issues must be submitted to the agencies no later than July 30. The Governor or the chairs also may request the agencies to submit "target budgets". The target budget may require the agencies to prioritize budget issues and may include requests for multiple options for the budget issues.

Governor's Recommended Budget:

At least 30 days prior to the Regular Session of the Legislature, the Governor is required to submit a recommended balanced budget for the state, based on the Governor's own conclusions and judgment.

However, s. 216.081, F.S., requires the Governor to include data submitted by the legislative and judicial branches to be included in the Governor's recommended budget without modification by the Governor.

Section 216.167, F.S., requires the Governor's recommended budget to include a financial schedule of the recommended recurring revenues available in, and the recurring and nonrecurring expenditures from, the Budget Stabilization Fund and the General Revenue Fund.

Section 216.168, F.S., allows the Governor to amend the recommended budget at any time. However, if the Governor determines that the recommendations are no longer supported by the official estimate of revenues, the Governor must bring his recommended budget into balance.

Budget Amendments:

Section 216.181, F.S., provides that the General Appropriations Act and other acts containing appropriations shall be considered the approved operating budget for operational and fixed capital outlay expenditures. The approved operating budget may be modified under certain circumstances.

Section 216.181, F.S., delegates to the Governor, for the executive branch, and the Chief Justice, for the judicial branch, the authority to increase trust fund budget authority by up to $1 million. The law delegates to the Legislative Budget Commission the authority to approve, upon the recommendation of the Governor or Chief Justice, an increase in trust fund budget authority in excess of $1 million.

Section 216.292, F.S., delegates to the agency heads the authority to transfer funds within the approved operating budget in certain instances. So long as no category is changed by more than 5 percent of the original approved budget, or $250,000, whichever is greater, an agency head is permitted to transfer budget authority (a) between appropriation categories within the same budget entity, and (b) between budget entities within identical categories. The agency head is also permitted to transfer funds within programs identified within the General Appropriations Act from identical funding sources between specific appropriation categories as long as the transfer does not result in an increase to the total recurring general revenue or trust fund cost of the agency in the next fiscal year.

Section 216.292, F.S., delegates to the Legislative Budget Commission the authority to approve, upon the recommendation of the Governor or Chief Justice, a transfer of general revenue funds within a state agency or the judicial branch and a transfer of trust fund budget authority in excess of the agency head's discretion.

Notice of budget amendments must be provided to the chair and vice chair of the Legislative Budget Commission at least 14 days prior to the action or at least 3 days prior to a release of funds. The chair and vice chair of the Legislative Budget Commission or the presiding officers of the Legislature may void a budget action if notice is provided in writing to the Governor, for the executive branch, or the Chief Justice, for the judicial branch, that such action exceeds delegated authority or is contrary to legislative policy and intent. If such notice is given, the Governor or Chief Justice must void such budget action until the Legislative Budget Commission or Legislature addresses the issue.

Certified Forwards:

Section 216.301, F.S., requires each agency head to certify to the Executive Office of the Governor on or before August 1 of each year the balance of any appropriation for operations not disbursed but expended. Funds remaining undisbursed on September 30 revert to the fund from which appropriated.

The unexpended balance of any appropriation for fixed capital outlay subject to, but not under the terms of, a binding contract by February 1 after the date of certification, or the next February 1 if the project is an educational facility or a construction project for a university, shall revert and be available for reappropriation.

Consensus Estimating Conferences:

Section 216.136, F.S., creates consensus estimating conferences. These conferences develop official estimates of revenues, workload, expenditures, and other information related to budgeting. Executive agencies are required to use the conferences' official information for budgeting purposes.

Salary Rate:

Section 216.181, F.S., defines "salary rate" as the monetary compensation authorized to be paid a position on an annualized basis. In short, rate represents purely salary and does not include moneys authorized for benefits associated with the position.

Salary rate is the mechanism used in Florida to control overall salary expenditures and avoid unanticipated costs to annualize agency personnel actions, especially those actions occurring late in the fiscal year. Absent a control on salary rate, agencies would be limited only to the total level of salaries and benefits budget for purposes of implementing personnel decisions. This would allow agencies to implement position upgrades or pay raises late in the fiscal year, when the budget impact is small enough to be absorbed within the agency's total budget for the year. However, the annual impact of those decisions would not be covered automatically in the next year's budget, thus creating an immediate salary deficit.

See the Section Directory for the changes made by HB 7189.

C. SECTION DIRECTORY:

Section 1. Amends s. 11.243, F.S., to require proceeds from the sale of Florida Statutes be deposited into the Grants and Donations Trust Fund within the Legislature.

Section 2. Amends s. 11.513, F. S., to clarify the application of the section to the judicial branch of government. It requires additional data be included in the plans for monitoring major programs of state agencies and in the reviews of those programs and provides for the Office of Program Policy Analysis and Government Accountability to review agency performance standards and report to the Governor, the Legislature, and the Legislative Budget Commission. Conforms language to changes made in s. 216.1827, F.S.

Section 3. Amends s. 20.435, F.S., and changes the term "certified" pertaining to the certification forward of unspent budget authority to "carry forward" to conform to changes in s. 216.301, F.S.

Section 4. Amends s. 215.18, F.S., and provides for notice and review pursuant to s. 216.177, F.S., for temporary trust fund transfers from funds authorized to cover deficits.

Section 5. Amends s. 215.3206, F.S., and allows the identification of trust funds to be established pursuant to legislative budget instructions for purposes of review by the Governor, Chief Justices and agencies.

Section 6. Amends s. 215.3208, F.S., and allows the identification of trust funds to be established pursuant to legislative budget instructions for purposes of legislative review of trust funds.

Section 7. Amends s. 215.35, F.S., and requires the Chief Financial Officer to uniquely identify all warrants for purposes of audit and reconciliation. Removes language that contains specific requirements to number warrants by fiscal year and to include the voucher number on the warrant.

Section 8. Amends s. 215.422, F.S., and revises the current prompt payment process to facilitate transition to a new accounting system to provide the ability for the Chief Financial Officer to improve federal reporting. It replaces the term "voucher" with "invoice". It clarifies that agencies need to approve the invoice in the state financial system within 20 days. It defines as an error, the failure to submit the proper tax payer identification information documentation by a vendor, and requires the proper tax payer identification information documentation to be submitted before the prompt payment standards are to be applied.

Section 9. Amends s. 215.97, F.S., to change the method of tracking state financial assistance expenditures in order to accommodate changes to the state's financial system.

Section 10. Amends s. 216.011, F.S., to define "incurred obligation" for purposes of financial matters. It also amends s. 216.013, F.S., and defines Salary Rate Reserve for purposes of managing the approved budget, and it provides that capitalization threshold provisions relating to Operating Capital Outlay are defined pursuant to s. 273.025, F.S.

Section 11. Amends s. 216.013, F.S., to provide for inclusion of performance measures and standards in long-range program plans.

Sections 12. Amends s. 216.023, F.S., to remove references to performance measures and standards from requirements for submission of legislative budget requests by agencies and the judicial branch.

Section 13. Amends s. 216.134, F.S., to include in the general provisions relating to estimating conferences, that the responsibility for presiding over sessions of the estimating conferences shall be rotated among the principals.

Section 14. Amends s. 216.136, F.S., to standardize the composition of each estimating conference.

Section 15. Amends s. 216.177, F.S., to provide for a different period of review, if provided in law, for notice, review and objection procedures.

Section 16. Amends s. 216.178, F.S., and changes the date the Final Budget Report is due from October 15th to October 30th.

Section 17. Amends s. 216.181, F.S., and requires the Executive Office of the Governor or the Chief Justice of the Supreme Court to submit a detailed plan to allocate lump-sum budget categories to the chairs of appropriations committees.

Section 18. Amends s. 216.1811, F.S., and requires the Governor and Chief Financial Officer to make changes to the original approved operating budgets as directed by presiding officers of the Legislature.

Section 19. Amends s. 216.1815, F.S., to make conforming changes

Section 20. Creates s. 216.1827, F.S., which establishes new procedures for maintaining and revising performance measures.

Section 21. Amends s. 216.292, F.S., and revises procedures for 5 percent transfer authority between agency budget categories.

Section 22. Amends s. 216.301, F.S., as amended by Ch. 2005-152, L.O.F., to revise the process relating to the certification forward of unspent budget authority. It also changes the date by which the Governor's Office of Planning and Budgeting must furnish Fixed Capital Outlay budget reversions to the Chief Financial Officer from February 20th to February 28th.

Section 23. Amends s. 252.37, F.S., and clarifies that the Legislative Budget Commission must approve budget amendments which transfer funds from unappropriated surplus funds to provide funding for emergencies.

Section 24. Amends s. 273.02, F.S., and provides that procedures for recording property in the state's financial system for purposes of inventory will be established by rule by the Chief Financial Officer.

Section 25. Creates s. 273.025, F.S. and provides that capitalization requirements for property recorded in the state's financial system will be established by rule by the Chief Financial Officer.

Section 26. Amends s. 273.055, F.S., and transfers the Auditor General's rule making responsibilities relating to state owned tangible personal property to the Chief Financial Officer.

Section 27. Amends s. 274.02, F.S., to provide that the requirements for recording property will be established by rule rather than statute. It transfers responsibility from the Auditor General to the Chief Financial Officer.

Section 28. Amends s. 338.2116, F.S., and changes the date which the Department of Transportation's unspent budget shall be carried forward to September 30th.

Section 29. Amends s. 1011.57, F.S., and changes the term "certified" pertaining to the certification forward of unspent budget authority to "carry forward" to conform to changes in s. 216.301, F.S.

Section 30. Repeals s. 215.29, F.S.

Section 31. Provides that this section takes effect upon becoming law. Also provides an effective date of July 1, 2006 unless otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable because this bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; nor does it reduce the authority that cities or counties have to raise revenues in the aggregate; and it does not reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Expressly granted to the Chief Financial Officer.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to state financial matters; amending s. 11.243, F.S.; providing for the moneys collected from the sale of the Florida Statutes or other publications to be deposited in a specified trust fund; amending s. 11.513, F.S.; requiring the Chief Justice of the Supreme Court to develop program monitoring plans; requiring that additional data be included in the plans for monitoring major programs of state agencies and the judicial branch and in the reviews of those programs; providing for the Office of Program Policy Analysis and Government Accountability to review agency and judicial branch performance standards and report to the Governor, the Legislature, and the Legislative Budget Commission; amending s. 20.435, F.S.; revising a provision relating to certain undisbursed balances of appropriations from the Biomedical Research Trust Fund; amending s. 215.18, F.S.; requiring that the Governor provide prior notice of transfers between certain funds; amending s. 215.3206, F.S.; replacing references to a 6-digit fund code in the Florida Accounting Information Resource Subsystem with a classification scheme consistent with the Department of Financial Services' financial systems; amending s. 215.3208, F.S.; revising references to conform; amending s. 215.35, F.S.; revising a provision relating to the numbering of warrants issued by the Chief Financial Officer; amending s. 215.422, F.S.; replacing a reference to certain vouchers with the terms "invoice" or

"invoices"; clarifying that agencies or the judicial branch record and approve certain invoices by a specified date; revising provisions relating to the Department of Financial Services' approval of payment of certain invoices; providing that a vendor who does not submit the appropriate federal taxpayer identification documentation to the department will be deemed an error on the part of the vendor; revising references to conform; amending s. 215.97, F.S.; removing a reference to the appropriations act in a provision relating to the purposes of the Florida Single Audit Act; amending s. 216.011, F.S.; revising the definition of "operating capital outlay"; defining the terms "incurred obligation" and "salary rate reserve" for purposes of state fiscal affairs, appropriations, and budgets; amending s. 216.013, F.S.; revising requirements for information regarding performance measures to be included in the long-range program plans of state agencies and the judicial branch; revising a provision relating to making adjustments to long-range program plans; amending s. 216.023, F.S.; revising certain requirements for legislative budget requests; deleting a provision requiring agencies to maintain a certain performance accountability system and provide a list of performance measures; deleting a provision relating to adjustments to executive agency performance standards; deleting a provision relating to adjustments to judicial branch performance standards; amending s. 216.134, F.S.; providing for the responsibility of presiding over

sessions of consensus estimating conferences; amending s. 216.136, F.S.; revising provisions relating to the principals of consensus estimating conferences; revising the duties of certain agencies relating to the Criminal Justice Estimating Conference, the Social Services Estimating Conference, and the Workforce Estimating Conference; amending s. 216.177, F.S.; clarifying the circumstances under which the Executive Office of the Governor and the Chief Justice of the Supreme Court are required to provide notice to the chair and vice chair of the Legislative Budget Commission; amending s. 216.178, F.S.; revising the date by which the Office of Planning and Budgeting must produce a final budget report; amending s. 216.181, F.S.; providing that amendments to certain approved operating budgets are subject to objection procedures; requiring that state agencies submit to the chair and vice chair of the Legislative Budget Commission a plan for allocating any lump-sum appropriation in a budget amendment; creating s. 216.1811, F.S.; providing requirements for the Governor and the Chief Financial Officer relating to certain approved operating budgets for the legislative branch and appropriations made to the legislative branch; amending s. 216.1815, F.S.; revising certain requirements for the performance standards included in an amended operating budget plan and request submitted to the Legislative Budget Commission; creating s. 216.1827, F.S.; requiring that each state agency and the judicial branch maintain a performance accountability

system; requiring agencies and the judicial branch to submit specified information to the Executive Office of the Governor and the Legislature or the Office of Program Policy Analysis and Government Accountability for review; providing guidelines for requests to delete or amend existing approved performance measures and standards; specifying authority of the Legislature relating to agency and judicial branch performance measures and standards; amending s. 216.292, F.S.; requiring that notice of changed conditions necessitating the budget action be provided to the Executive Office of the Governor and the legislative appropriations committees when funds are transferred between categories of appropriations or budget entities; requiring that such transfers be consistent with legislative policy and intent; providing that certain transfers between budget entities are subject to objection procedures; clarifying provisions authorizing certain transfers of appropriations from trust funds; providing that requirements of specified provisions relating to appropriations being nontransferable do not apply to legislative branch budgets; amending s. 216.301, F.S.; revising the requirements for undisbursed balances of appropriations; revising a procedure for identifying and paying incurred obligations; removing a provision relating to notification to retain certain balances from legislative budget entities; amending s. 252.37, F.S.; providing that a transfer of moneys with a budget amendment following a state of emergency is subject to

approval by the Legislative Budget Commission; amending s. 273.02, F.S.; revising a definition; requiring the Chief Financial Officer to establish certain requirements by rule relating to the recording and inventory of certain state-owned property; creating s. 273.025, F.S.; requiring the Chief Financial Officer to establish by rule certain requirements relating to the capitalization of certain property; amending s. 273.055, F.S.; revising responsibility for rules relating to maintaining records as to disposition of state-owned tangible personal property; revising a provision relating to use of moneys received from the disposition of state-owned tangible personal property; amending s. 274.02, F.S.; revising a definition; requiring the Chief Financial Officer to establish by rule requirements relating to the recording and inventory of certain property owned by local governments; amending s. 338.2216, F.S.; revising requirements relating to unexpended funds appropriated or provided for the Florida Turnpike Enterprise; amending s. 1011.57, F.S.; revising requirements relating to unexpended funds appropriated to the Florida School for the Deaf and the Blind; repealing s. 215.29, F.S., relating to the classification of Chief Financial Officer's warrants; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 11.243, Florida

Statutes, is amended to read:

11.243 Publishing Florida Statutes; price, sale.--

(3) All moneys collected from the sale of the Florida Statutes or other publications shall be deposited in the Grants and Donations Trust Fund within the Legislature ~~State Treasury and credited to the appropriation for legislative expense~~.

Section 2. Subsections (2) and (3) of section 11.513, Florida Statutes, are amended, present subsections (5) and (6) of that section are renumbered as subsections (6) and (7), respectively, and a new subsection (5) is added to that section, to read:

11.513 Program evaluation and justification review.--

(2) A state agency's inspector general, internal auditor, or other person designated by the agency head or the Chief Justice of the Supreme Court shall develop, in consultation with the Office of Program Policy Analysis and Government Accountability, a plan for monitoring and reviewing the state agency's or the judicial branch's major programs to ensure that performance measures and standards, as well as baseline and previous-year performance data, are maintained and supported by agency records.

(3) The program evaluation and justification review shall be conducted on major programs, but may include other programs. The review shall be comprehensive in its scope but, at a minimum, must be conducted in such a manner as to specifically determine the following, and to consider and determine what changes, if any, are needed with respect thereto:

(a) The identifiable cost of each program.

(b) The specific purpose of each program, as well as the specific public benefit derived therefrom.

(c) Progress toward achieving the outputs and outcomes associated with each program.

(d) An explanation of circumstances contributing to the state agency's ability to achieve, not achieve, or exceed its projected outputs and outcomes, as defined in s. 216.011, associated with each program.

(e) Alternate courses of action that would result in administration of the same program in a more efficient or effective manner. The courses of action to be considered must include, but are not limited to:

1. Whether the program could be organized in a more efficient and effective manner, whether the program's mission, goals, or objectives should be redefined, or, when the state agency cannot demonstrate that its efforts have had a positive effect, whether the program should be reduced in size or eliminated.

2. Whether the program could be administered more efficiently or effectively to avoid duplication of activities and ensure that activities are adequately coordinated.

3. Whether the program could be performed more efficiently or more effectively by another unit of government or a private entity, or whether a program performed by a private entity could be performed more efficiently and effectively by a state agency.

4. When compared to costs, whether effectiveness warrants elimination of the program or, if the program serves a limited interest, whether it should be redesigned to require users to

finance program costs.

5. Whether the cost to administer the program exceeds license and other fee revenues paid by those being regulated.

6. Whether other changes could improve the efficiency and effectiveness of the program.

(f) The consequences of discontinuing such program. If any discontinuation is recommended, such recommendation must be accompanied by a description of alternatives to implement such recommendation, including an implementation schedule for discontinuation and recommended procedures for assisting state agency employees affected by the discontinuation.

(g) Determination as to public policy, which may include recommendations as to whether it would be sound public policy to continue or discontinue funding the program, either in whole or in part, in the existing manner.

(h) Whether current performance measures and standards should be reviewed or amended to assist agencies' and the judicial branch's efforts in achieving outputs and outcome measures.

(i) ~~(h)~~ Whether the information reported as part of the state's performance-based program budgeting system has relevance and utility for the evaluation of each program.

(j) ~~(i)~~ Whether state agency management has established control systems sufficient to ensure that performance data are maintained and supported by state agency records and accurately presented in state agency performance reports.

(5) The Office of Program Policy Analysis and Government Accountability may perform evaluation and justification reviews

when necessary and as directed by the Legislature in order to determine whether current agency and judicial branch performance measures and standards are adequate. Reports concerning the evaluation and review of agency performance measures and standards shall be submitted to the Executive Office of the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chair and vice chair of the Legislative Budget Commission.

Section 3. Paragraph (h) of subsection (1) of section 20.435, Florida Statutes, is amended to read:

20.435 Department of Health; trust funds.--

(1) The following trust funds are hereby created, to be administered by the Department of Health:

(h) Biomedical Research Trust Fund.

1. Funds to be credited to the trust fund shall consist of funds deposited pursuant to s. 215.5601. Funds shall be used for the purposes of the James and Esther King Biomedical Research Program as specified in ss. 215.5602 and 288.955. The trust fund is exempt from the service charges imposed by s. 215.20.

2. Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund. The department may invest these funds independently through the Chief Financial Officer or may negotiate a trust agreement with the State Board of Administration for the investment management of any balance in the trust fund.

3. Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of any appropriation from the Biomedical Research Trust Fund which is not disbursed but which is obligated pursuant to contract or committed to be expended may be carried forward ~~certified by the Governor~~ for up to 3 years following the effective date of the original appropriation.

4. The trust fund shall, unless terminated sooner, be terminated on July 1, 2008.

Section 4. Section 215.18, Florida Statutes, is amended to read:

215.18 Transfers between funds; limitation.--Whenever there exists in any fund provided for by s. 215.32 a deficiency which would render such fund insufficient to meet its just requirements, and there shall exist in the other funds in the State Treasury moneys which are for the time being or otherwise in excess of the amounts necessary to meet the just requirements of such last-mentioned funds, the Governor may order a temporary transfer of moneys from one fund to another in order to meet temporary deficiencies in a particular fund without resorting to the necessity of borrowing money and paying interest thereon. Any action proposed under this section is subject to the notice and objection procedures set forth in s. 216.177, and the Governor shall provide notice of such action at least 7 days prior to the effective date of the transfer of funds.

(1) Except as otherwise provided in s. 216.222(1)(a)2., the fund from which any money is temporarily transferred shall be repaid the amount transferred from it not later than the end of the fiscal year in which such transfer is made, the date of

repayment to be specified in the order of the Governor.

(2) Notwithstanding subsection (1) and for the 2005-2006 fiscal year only, the repayment period for funds temporarily transferred in fiscal year 2004-2005 to meet deficiencies resulting from hurricanes striking this state in 2004 may be extended until grants awarded by the Federal Emergency Management Agency for FEMA Disaster Declarations 1539-DR-FL, 1545-DR-FL, 1551-DR-FL, and 1561-DR-FL are received. This subsection expires July 1, 2006.

Section 5. Subsections (2) and (4) of section 215.3206, Florida Statutes, are amended to read:

215.3206 Trust funds; termination or re-creation.--

(2) If the trust fund is terminated and not immediately re-created, all cash balances and income of the trust fund shall be deposited into the General Revenue Fund. The agency or Chief Justice shall pay any outstanding debts of the trust fund as soon as practicable, and the Chief Financial Officer shall close out and remove the trust fund from the various state financial ~~accounting~~ systems, using generally accepted accounting practices concerning warrants outstanding, assets, and liabilities. No appropriation or budget amendment shall be construed to authorize any encumbrance of funds from a trust fund after the date on which the trust fund is terminated or is judicially determined to be invalid.

(4) For the purposes of this section, the Governor, Chief Justice, and agencies shall review the trust funds as they are identified by a classification scheme set out in the legislative budget request instructions pursuant to s. 216.023 consistent

with the Department of Financial Services' financial systems ~~by a unique 6 digit code in the Florida Accounting Information Resource Subsystem at a level composed of the 2 digit organization level 1, the 1 digit state fund type 2, and the first three digits of the fund identifier~~. The Governor, Chief Justice, and agencies may also conduct their review and make recommendations concerning accounts within such trust funds.

Section 6. Subsection (1) and paragraph (a) of subsection (2) of section 215.3208, Florida Statutes, are amended to read:

215.3208 Trust funds; legislative review.--

(1) In order to implement s. 19(f), Art. III of the State Constitution, for the purpose of reviewing trust funds prior to their automatic termination pursuant to the provisions of s. 19(f)(2), Art. III of the State Constitution, the Legislature shall review all state trust funds at least once every 4 years. The schedule for such review may be included in the legislative budget instructions developed pursuant to the requirements of s. 216.023. The Legislature shall review trust funds as they are identified by a classification scheme set out in the legislative budget request instructions pursuant to s. 216.023 consistent with the Department of Financial Services' financial systems ~~by a unique 6 digit code in the Florida Accounting Information Resource Subsystem at a level composed of the 2 digit organization level 1, the 1 digit state fund type 2, and the first three digits of the fund identifier~~. When a statutorily created trust fund that was in existence on November 4, 1992, has more than one fund ~~6 digit~~ code in the financial systems, the Legislature may treat it as a single trust fund for the

purposes of this section. The Legislature may also conduct its review concerning accounts within such trust funds.

(2)(a) When the Legislature terminates a trust fund, the agency or branch of state government that administers the trust fund shall pay any outstanding debts or obligations of the trust fund as soon as practicable, and the Chief Financial Officer shall close out and remove the trust fund from the various state financial ~~accounting~~ systems, using generally accepted accounting principles concerning assets, liabilities, and warrants outstanding.

Section 7. Section 215.35, Florida Statutes, is amended to read:

215.35 State funds; warrants and their issuance.--All warrants issued by the Chief Financial Officer shall be numbered in a manner that uniquely identifies each warrant for audit and reconciliation purposes ~~chronological order commencing with number one in each fiscal year and each warrant shall refer to the Chief Financial Officer's voucher by the number thereof, which voucher shall also be numbered as above set forth~~. Each warrant shall state the name of the payee thereof and the amount allowed, and said warrant shall be stated in words at length. No warrant shall issue until same has been authorized by an appropriation made by law but such warrant need not state or set forth such authorization. The Chief Financial Officer shall register and maintain a record of each warrant in his or her office. The record shall show the funds, accounts, purposes, and departments involved in the issuance of each warrant. In those instances where the expenditure of funds of regulatory boards or

commissions has been provided for by laws other than the annual appropriations bill, warrants shall be issued upon requisition to the Chief Financial Officer by the governing body of such board or commission.

Section 8. Subsections (1) and (2), paragraphs (a) and (b) of subsection (3), and subsection (6) of section 215.422, Florida Statutes, are amended to read:

215.422 Payments, warrants~~, vouchers,~~ and invoices; processing time limits; dispute resolution; agency or judicial branch compliance.--

(1) ~~The voucher authorizing payment of~~ An invoice submitted to an agency of the state or the judicial branch, required by law to be filed with the Chief Financial Officer, shall be recorded in the financial systems of the state, approved for payment by the agency or the judicial branch, and filed with the Chief Financial Officer not later than 20 days after receipt of the invoice and receipt, inspection, and approval of the goods or services, except that in the case of a bona fide dispute the invoice recorded in the financial systems of the state ~~voucher~~ shall contain a statement of the dispute and authorize payment only in the amount not disputed. The Chief Financial Officer may establish dollar thresholds and other criteria for all invoices and may delegate to a state agency or the judicial branch responsibility for maintaining the official invoices ~~vouchers~~ and documents for invoices which do not exceed the thresholds or which meet the established criteria. Such records shall be maintained in accordance with the requirements established by the Secretary of State. The transmission of an

approved invoice recorded in the financial systems of the state ~~electronic payment request transmission~~ to the Chief Financial Officer shall constitute filing of a request ~~voucher~~ for payment of invoices for which the Chief Financial Officer has delegated to an agency custody of official records. Approval and inspection of goods or services shall take no longer than 5 working days unless the bid specifications, purchase order, or contract specifies otherwise. If an invoice ~~a voucher~~ filed within the 20-day period is returned by the Department of Financial Services because of an error, it shall nevertheless be deemed timely filed. The 20-day filing requirement may be waived in whole or in part by the Department of Financial Services on a showing of exceptional circumstances in accordance with rules and regulations of the department. For the purposes of determining the receipt of invoice date, the agency or the judicial branch is deemed to receive an invoice on the date on which a proper invoice is first received at the place designated by the agency or the judicial branch. The agency or the judicial branch is deemed to receive an invoice on the date of the invoice if the agency or the judicial branch has failed to annotate the invoice with the date of receipt at the time the agency or the judicial branch actually received the invoice or failed at the time the order is placed or contract made to designate a specific location to which the invoice must be delivered.

(2) The Department of Financial Services shall approve payment of an invoice no later than 10 days after the agency's filing of the approved invoice ~~The warrant in payment of an~~

~~invoice submitted to an agency of the state or the judicial branch shall be issued not later than 10 days after filing of the voucher authorizing payment~~. However, this requirement may be waived in whole or in part by the Department of Financial Services on a showing of exceptional circumstances in accordance with rules and regulations of the department. If the 10-day period contains fewer than 6 working days, the Department of Financial Services shall be deemed in compliance with this subsection if the payment is approved ~~warrant is issued~~ within 6 working days without regard to the actual number of calendar days. ~~For purposes of this section, a payment is deemed to be issued on the first working day that payment is available for delivery or mailing to the vendor.~~

(3)(a) Each agency of the state or the judicial branch which is required by law to file invoices ~~vouchers~~ with the Chief Financial Officer shall keep a record of the date of receipt of the invoice; dates of receipt, inspection, and approval of the goods or services; date of filing of the approved invoice ~~voucher~~; and date of issuance of the warrant in payment thereof. If the invoice ~~voucher~~ is not filed or the warrant is not issued within the time required, an explanation in writing by the agency head or the Chief Justice shall be submitted to the Department of Financial Services in a manner prescribed by it. Agencies and the judicial branch shall continue to deliver or mail state payments promptly.

(b) If a warrant in payment of an invoice is not issued within 40 days after receipt of the invoice and receipt, inspection, and approval of the goods and services, the agency

or judicial branch shall pay to the vendor, in addition to the amount of the invoice, interest at a rate as established pursuant to s. 55.03(1) on the unpaid balance from the expiration of such 40-day period until such time as the warrant is issued to the vendor. Such interest shall be added to the invoice at the time of submission to the Chief Financial Officer for payment whenever possible. If addition of the interest penalty is not possible, the agency or judicial branch shall pay the interest penalty payment within 15 days after issuing the warrant. The provisions of this paragraph apply only to undisputed amounts for which payment has been authorized. Disputes shall be resolved in accordance with rules developed and adopted by the Chief Justice for the judicial branch, and rules adopted by the Department of Financial Services or in a formal administrative proceeding before an administrative law judge of the Division of Administrative Hearings for state agencies, provided that, for the purposes of ss. 120.569 and 120.57(1), no party to a dispute involving less than $1,000 in interest penalties shall be deemed to be substantially affected by the dispute or to have a substantial interest in the decision resolving the dispute. In the case of an error on the part of the vendor, the 40-day period shall begin to run upon receipt by the agency or the judicial branch of a corrected invoice or other remedy of the error. <u>For purposes of this section, the non-submittal of the appropriate federal taxpayer identification documentation to the Department of Financial Services by the vendor will be deemed an error on the part of the vendor and the vendor will be required to submit the appropriate federal</u>

taxpayer documentation in order to remedy the error. The provisions of this paragraph do not apply when the filing requirement under subsection (1) or subsection (2) has been waived in whole by the Department of Financial Services. The various state agencies and the judicial branch shall be responsible for initiating the penalty payments required by this subsection and shall use this subsection as authority to make such payments. The budget request submitted to the Legislature shall specifically disclose the amount of any interest paid by any agency or the judicial branch pursuant to this subsection. The temporary unavailability of funds to make a timely payment due for goods or services does not relieve an agency or the judicial branch from the obligation to pay interest penalties under this section.

(6) The Department of Financial Services shall monitor each agency's and the judicial branch's compliance with the time limits and interest penalty provisions of this section. The department shall provide a report to an agency or to the judicial branch if the department determines that the agency or the judicial branch has failed to maintain an acceptable rate of compliance with the time limits and interest penalty provisions of this section. The department shall establish criteria for determining acceptable rates of compliance. The report shall also include a list of late invoices ~~vouchers~~ or payments, the amount of interest owed or paid, and any corrective actions recommended. The department shall perform monitoring responsibilities, pursuant to this section, using the Department of Financial Services' financial systems ~~Management Services and~~

~~Purchasing Subsystem or the Florida Accounting Information Resource Subsystem~~ provided in s. 215.94. Each agency and the judicial branch shall be responsible for the accuracy of information entered into the Department of Management Services' procurement system ~~Management Services and Purchasing Subsystem~~ and the Department of Financial Services' financial systems ~~Florida Accounting Information Resource Subsystem~~ for use in this monitoring.

Section 9. Paragraph (d) of subsection (1) of section 215.97, Florida Statutes, is amended to read:

215.97 Florida Single Audit Act.--

(1) The purposes of the section are to:

(d) Provide for identification of state financial assistance transactions in the ~~appropriations act,~~ state accounting records~~,~~ and recipient organization records.

Section 10. Effective upon this act becoming a law, paragraph (bb) of subsection (1) of section 216.011, Florida Statutes, is amended, and paragraphs (tt) and (uu) are added to that subsection, to read:

216.011 Definitions.--

(1) For the purpose of fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets, each of the following terms has the meaning indicated:

(bb) "Operating capital outlay" means the appropriation category used to fund equipment, fixtures, and other tangible personal property of a nonconsumable and nonexpendable nature under s. 273.025~~, according to the value or cost specified in s. 273.02~~.

(tt) "Incurred obligation" means a legal obligation for goods or services that have been contracted for, referred to as an encumbrance in the state's financial system, or received or incurred by the state and referred to as a payable in the state's financial system.

(uu) "Salary rate reserve" means the withholding of a portion of the annual salary rate for a specific purpose.

Section 11. Paragraphs (h) through (k) are added to subsection (1) of section 216.013, Florida Statutes, and subsection (5) of that section is amended, to read:

216.013 Long-range program plan.--State agencies and the judicial branch shall develop long-range program plans to achieve state goals using an interagency planning process that includes the development of integrated agency program service outcomes. The plans shall be policy based, priority driven, accountable, and developed through careful examination and justification of all agency and judicial branch programs.

(1) Long-range program plans shall provide the framework for the development of budget requests and shall identify or update:

(h) Legislatively approved output and outcome performance measures.

(i) Performance standards for each performance measure and justification for the standards and the sources of data to be used for measurement.

(j) Prior-year performance data on approved performance measures and an explanation of deviation from expected performance. Performance data must be assessed for reliability

in accordance with s. 20.055.

(k) Proposed performance incentives and disincentives.

(5) ~~Following the adoption of the annual General Appropriations Act,~~ The state agencies and the judicial branch shall make appropriate adjustments to their long-range program plans, excluding adjustments to performance measures and standards, to be consistent with the appropriations ~~and performance measures~~ in the General Appropriations Act and legislation implementing the General Appropriations Act. Agencies and the judicial branch have 30 days subsequent to the effective date of the General Appropriations Act and implementing legislation ~~until June 30~~ to make adjustments to their plans as posted on their Internet websites.

Section 12. Paragraph (a) of subsection (4) and subsections (5), (6), and (8) of section 216.023, Florida Statutes, are amended, and subsections (7), (9), (10), (11), and (12) are renumbered as subsections (5), (6), (7), (8), and (9), respectively, to read:

216.023 Legislative budget requests to be furnished to Legislature by agencies.--

(4)(a) The legislative budget request must contain for each program:

1. The constitutional or statutory authority for a program, a brief purpose statement, and approved program components.

2. Information on expenditures for 3 fiscal years (actual prior-year expenditures, current-year estimated expenditures, and agency budget requested expenditures for the next fiscal

year) by appropriation category.

3. Details on trust funds and fees.

4. The total number of positions (authorized, fixed, and requested).

5. An issue narrative describing and justifying changes in amounts and positions requested for current and proposed programs for the next fiscal year.

6. Information resource requests.

~~7. Legislatively approved Output and outcome performance measures and any proposed revisions to measures.~~

~~8. Proposed performance standards for each performance measure and justification for the standards and the sources of data to be used for measurement.~~

~~9. Prior year performance data on approved performance measures and an explanation of deviation from expected performance. Performance data must be assessed for reliability in accordance with s. 20.055.~~

~~10. Proposed performance incentives and disincentives.~~

7.~~11.~~ Supporting information, including applicable cost-benefit analyses, business case analyses, performance contracting procedures, service comparisons, and impacts on performance standards for any request to outsource or privatize agency functions.

8.~~12.~~ An evaluation of any major outsourcing and privatization initiatives undertaken during the last 5 fiscal years having aggregate expenditures exceeding $10 million during the term of the contract. The evaluation shall include an assessment of contractor performance, a comparison of

anticipated service levels to actual service levels, and a comparison of estimated savings to actual savings achieved. Consolidated reports issued by the Department of Management Services may be used to satisfy this requirement.

~~(5) Agencies must maintain a comprehensive performance accountability system and provide a list of performance measures maintained by the agency which are in addition to the measures approved by the Legislature.~~

~~(6) Annually, by June 30, executive agencies shall submit to the Executive Office of the Governor adjustments to their performance standards based on the amounts appropriated for each program by the Legislature. When such an adjustment is made, all performance standards, including any adjustments made, shall be reviewed and revised as necessary by the Executive Office of the Governor and, upon approval, submitted to the Legislature pursuant to the review and approval process provided in s. 216.177. The Senate and the House of Representatives appropriations committees shall advise Senate substantive committees and House of Representatives substantive committees, respectively, of all adjustments made to performance standards or measures. The Executive Office of the Governor shall maintain the official record of adjustments to the performance standards. As used in this section, the term "official record" means the official compilation of information about state agency performance based programs and measures, including approved programs, approved outputs and outcomes, baseline data, approved standards for each performance measure and any approved adjustments thereto, as well as actual agency performance for~~

~~each measure.~~

~~(8) Annually, by June 30, the judicial branch shall make adjustments to any performance standards for approved programs based on the amount appropriated for each program, which shall be submitted to the Legislature pursuant to the notice and review process provided in s. 216.177. The Senate and the House of Representatives appropriations committees shall advise Senate substantive committees and House substantive committees, respectively, of all adjustments made to performance standards or measures.~~

Section 13. Paragraph (a) of subsection (4) of section 216.134, Florida Statutes, is amended to read:

216.134 Consensus estimating conferences; general provisions.--

(4) Consensus estimating conferences are within the legislative branch. The membership of each consensus estimating conference consists of principals and participants.

(a) A person designated by law as a principal may preside over conference sessions, convene conference sessions, request information, specify topics to be included on the conference agenda, agree or withhold agreement on whether information is to be official information of the conference, release official information of the conference, interpret official information of the conference, and monitor errors in official information of the conference. The responsibility of presiding over sessions of the conference shall be rotated among the principals.

Section 14. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), paragraph (b) of subsection (3), paragraph

(c) of subsection (4), subsections (5) through (7), paragraph (b) of subsection (8), paragraph (b) of subsection (9), and paragraph (b) of subsection (10) of section 216.136, Florida Statutes, are amended to read:

216.136 Consensus estimating conferences; duties and principals.--

(1) ECONOMIC ESTIMATING CONFERENCE.--

(b) Principals.--The Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the Senate and House of Representatives who have forecasting expertise, or their designees, are the principals of the Economic Estimating Conference. ~~The responsibility of presiding over sessions of the conference shall be rotated among the principals.~~

(2) DEMOGRAPHIC ESTIMATING CONFERENCE.--

(b) Principals.--The Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the Senate and House of Representatives who have forecasting expertise, or their designees, are the principals of the Demographic Estimating Conference. ~~The responsibility of presiding over sessions of the conference shall be rotated among the principals.~~

(3) REVENUE ESTIMATING CONFERENCE.--

(b) Principals.--The Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the Senate and House of Representatives who have forecasting expertise, or their designees, are the principals of the Revenue Estimating

Conference. ~~The responsibility of presiding over sessions of the conference shall be rotated among the principals.~~

(4) EDUCATION ESTIMATING CONFERENCE.--

(c) Principals.--The ~~Commissioner of Education, the~~ Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the Senate and House of Representatives who have forecasting expertise, or their designees, are the principals of the Education Estimating Conference. ~~The Commissioner of Education or his or her designee shall preside over sessions of the conference.~~

(5) CRIMINAL JUSTICE ESTIMATING CONFERENCE.--

(a) Duties.--The Criminal Justice Estimating Conference shall:

1. Develop such official information relating to the criminal justice system, including forecasts of prison admissions and population and of supervised felony offender admissions and population, as the conference determines is needed for the state planning and budgeting system.

2. Develop such official information relating to the number of eligible discharges and the projected number of civil commitments for determining space needs pursuant to the civil proceedings provided under part V of chapter 394.

3. Develop official information relating to the number of sexual offenders and sexual predators who are required by law to be placed on community control, probation, or conditional release who are subject to electronic monitoring. ~~In addition, the Office of Economic and Demographic Research shall study the~~

~~factors relating to the sentencing of sex offenders from the point of arrest through the imposition of sanctions by the sentencing court, including original charges, plea negotiations, trial dispositions, and sanctions. The Department of Corrections, the Office of the State Courts Administrator, the Florida Department of Law Enforcement, and the state attorneys shall provide information deemed necessary for the study. The final report shall be provided to the President of the Senate and the Speaker of the House of Representatives by March 1, 2006.~~

(b) Principals.--The Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of~~, who have forecasting expertise, from~~ the Senate and~~, the~~ House of Representatives who have forecasting expertise, ~~and the Supreme Court,~~ or their designees, are the principals of the Criminal Justice Estimating Conference. ~~The principal representing the Executive Office of the Governor shall preside over sessions of the conference.~~

(6) SOCIAL SERVICES ESTIMATING CONFERENCE.--

(a) Duties.--

1. The Social Services Estimating Conference shall develop such official information relating to the social services system of the state, including forecasts of social services caseloads, utilization, and expenditures, as the conference determines is needed for the state planning and budgeting system. Such official information shall include, but not be limited to, cash assistance and Medicaid caseloads.

2. The Social Services Estimating Conference shall develop

information relating to the Florida Kidcare program, including, but not limited to, outreach impacts, enrollment, caseload, utilization, and expenditure information that the conference determines is needed to plan for and project future budgets and the drawdown of federal matching funds. ~~The agencies required to collect and analyze Florida Kidcare program data under s. 409.8134 shall be participants in the Social Services Estimating Conference for purposes of developing information relating to the Florida Kidcare program.~~

(b) Principals.--The Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of ~~who have forecasting expertise from the Department of Children and Family Services, the Agency for Health Care Administration,~~ the Senate~~,~~ and ~~the~~ House of Representatives who have forecasting expertise, or their designees, are the principals of the Social Services Estimating Conference. ~~The principal representing the Executive Office of the Governor shall preside over sessions of the conference.~~

(7) WORKFORCE ESTIMATING CONFERENCE.--

(a) Duties.--

1. The Workforce Estimating Conference shall develop such official information on the workforce development system planning process as it relates to the personnel needs of current, new, and emerging industries as the conference determines is needed by the state planning and budgeting system. Such information, using quantitative and qualitative research methods, must include at least: short-term and long-term forecasts of employment demand for jobs by occupation and

industry; entry and average wage forecasts among those occupations; and estimates of the supply of trained and qualified individuals available or potentially available for employment in those occupations, with special focus upon those occupations and industries which require high skills and have high entry wages and experienced wage levels. In the development of workforce estimates, the conference shall use, to the fullest extent possible, local occupational and workforce forecasts and estimates.

2. The Workforce Estimating Conference shall review data concerning the local and regional demands for short-term and long-term employment in High-Skills/High-Wage Program jobs, as well as other jobs, which data is generated through surveys conducted as part of the state's Internet-based job matching and labor market information system authorized under s. 445.011. The conference shall consider such data in developing its forecasts for statewide employment demand, including reviewing the local and regional data for common trends and conditions among localities or regions which may warrant inclusion of a particular occupation on the statewide occupational forecasting list developed by the conference. Based upon its review of such survey data, the conference shall also make recommendations semiannually to Workforce Florida, Inc., on additions or deletions to lists of locally targeted occupations approved by Workforce Florida, Inc.

~~3. During each legislative session, and at other times if necessary, the Workforce Estimating Conference shall meet as the Workforce Impact Conference for the purpose of determining the~~

~~effects of legislation related to the state's workforce and economic development efforts introduced prior to and during such legislative session. In addition to the designated principals of the impact conference, nonprincipal participants of the impact conference shall include a representative of the Florida Chamber of Commerce and other interested parties. The impact conference shall use both quantitative and qualitative research methods to determine the impact of introduced legislation related to workforce and economic development issues.~~

3.~~4.~~ ~~Notwithstanding subparagraph 3.,~~ The Workforce Estimating Conference, for the purposes described in subparagraph 1., shall meet no less than 2 times in a calendar year. The first meeting shall be held in February, and the second meeting shall be held in August. Other meetings may be scheduled as needed.

(b) Principals.--The ~~Commissioner of Education, the~~ Executive Office of the Governor, ~~the director of the Office of Tourism, Trade, and Economic Development, the director of the Agency for Workforce Innovation, the executive director of the Commission for Independent Education, the Chancellor of the State University System, the chair of Workforce Florida, Inc.,~~ the coordinator of the Office of Economic and Demographic Research, ~~or their designees,~~ and professional staff of ~~from~~ the Senate and ~~the~~ House of Representatives who have forecasting ~~and substantive~~ expertise, or their designees, are the principals of the Workforce Estimating Conference. ~~In addition to the designated principals of the conference, nonprincipal participants of the conference shall include a representative of~~

~~the Florida Chamber of Commerce and other interested parties. The principal representing the Executive Office of the Governor shall preside over the sessions of the conference.~~

(8) EARLY LEARNING PROGRAMS ESTIMATING CONFERENCE.--

(b) Principals.--The Executive Office of the Governor, the coordinator ~~Director~~ of the Office of Economic and Demographic Research, and professional staff of ~~who have forecasting expertise from the Agency for Workforce Innovation, the Department of Children and Family Services, the Department of Education,~~ the Senate~~,~~ and ~~the~~ House of Representatives who have forecasting expertise, or their designees, are the principals of the Early Learning Programs Estimating Conference. ~~The principal representing the Executive Office of the Governor shall preside over sessions of the conference.~~

(9) SELF-INSURANCE ESTIMATING CONFERENCE.--

(b) Principals.--The Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the Senate and ~~the~~ House of Representatives who have forecasting expertise ~~and substantive experience~~, or their designees, are the principals of the Self-Insurance Estimating Conference. ~~The responsibility of presiding over sessions of the conference shall be rotated among the principals.~~

(10) FLORIDA RETIREMENT SYSTEM ACTUARIAL ASSUMPTION CONFERENCE.--

(b) Principals.--The Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the Senate and House of

Representatives who have forecasting ~~and substantive~~ expertise, or their designees, are the principals of the Florida Retirement System Actuarial Assumption Conference. ~~The Executive Office of the Governor shall have the responsibility of presiding over the sessions of the conference. The State Board of Administration and the Division of Retirement shall be participants in the conference.~~

Section 15. Paragraph (a) of subsection (2) of section 216.177, Florida Statutes, is amended to read:

216.177 Appropriations acts, statement of intent, violation, notice, review and objection procedures.--

(2)(a) Whenever notice of action to be taken by the Executive Office of the Governor or the Chief Justice of the Supreme Court is required by <u>law</u> ~~this chapter~~, such notice shall be given to the chair and vice chair of the Legislative Budget Commission in writing, and shall be delivered at least 14 days prior to the action referred to, unless a shorter period is approved in writing by the chair and vice chair <u>or a different period is specified by law</u>. If the action is solely for the release of funds appropriated by the Legislature, the notice shall be delivered at least 3 days before the effective date of the action. Action shall not be taken on any budget item for which this chapter requires notice to the Legislative Budget Commission or the appropriations committees without such notice having been provided, even though there may be good cause for considering such item.

Section 16. Subsection (2) of section 216.178, Florida Statutes, is amended to read:

216.178 General Appropriations Act; format; procedure.--

(2) The Office of Planning and Budgeting shall develop a final budget report that reflects the net appropriations for each budget item. The report shall reflect actual expenditures for each of the 2 preceding fiscal years and the estimated expenditures for the current fiscal year. In addition, the report must contain the actual revenues and cash balances for the preceding 2 fiscal years and the estimated revenues and cash balances for the current fiscal year. The report may also contain expenditure data, program objectives, and program measures for each state agency program. The report must be produced by October 30 ~~15~~ each year. A copy of the report must be made available to each member of the Legislature, to the head of each state agency, to the Auditor General, to the director of the Office of Program Policy Analysis and Government Accountability, and to the public.

Section 17. Subsections (3), (5), (6), and (11) of section 216.181, Florida Statutes, are amended to read:

216.181 Approved budgets for operations and fixed capital outlay.--

(3) All amendments to original approved operating budgets, regardless of funding source, are subject to the notice and objection ~~review~~ procedures set forth in s. 216.177.

(5) An amendment to the original operating budget for an information technology project or initiative that involves more than one agency, has an outcome that impacts another agency, or exceeds $500,000 in total cost over a 1-year period, except for those projects that are a continuation of hardware or software

maintenance or software licensing agreements, or that are for desktop replacement that is similar to the technology currently in use must be reviewed by the Technology Review Workgroup pursuant to s. 216.0446 and approved by the Executive Office of the Governor for the executive branch or by the Chief Justice for the judicial branch, and shall be subject to the notice and objection ~~review~~ procedures set forth in s. 216.177.

(6)(a) A detailed plan allocating a lump-sum appropriation to traditional appropriations categories shall be submitted by the affected agency to the Executive Office of the Governor or the Chief Justice of the Supreme Court. The Executive Office of the Governor and the Chief Justice of the Supreme Court shall submit such plan to the chair and vice chair of the Legislative Budget Commission either before or concurrent with the submission of any budget amendment that recommends the transfer and release of ~~may require the submission of a detailed plan from the agency or entity of the judicial branch affected, consistent with the General Appropriations Act, special appropriations acts, and statements of intent before transferring and releasing~~ the balance of a lump-sum appropriation.

(b) The Executive Office of the Governor and the Chief Justice of the Supreme Court may amend, without approval of the Legislative Budget Commission, state agency and judicial branch entity budgets, respectively, to reflect the transferred funds and to provide the associated increased salary rate based on the approved plans for lump-sum appropriations. Any action proposed pursuant to this paragraph is subject to the procedures set

forth in s. 216.177.

The Executive Office of the Governor shall transmit to each state agency and the Chief Financial Officer, and the Chief Justice shall transmit to each judicial branch component and the Chief Financial Officer, any approved amendments to the approved operating budgets.

(8) As part of the approved operating budget, the Executive Office of the Governor shall furnish to each state agency, and the Chief Justice of the Supreme Court shall furnish to the entity of the judicial branch, an approved annual salary rate for each budget entity containing a salary appropriation. This rate shall be based upon the actual salary rate and shall be consistent with the General Appropriations Act or special appropriations acts. The annual salary rate shall be:

(a) Determined by the salary rate specified in the General Appropriations Act and adjusted for reorganizations authorized by law, for any other appropriations made by law, and, subject to s. 216.177, for distributions of lump-sum appropriations and administered funds and for actions that require authorization of salary rate from salary rate reserve and placement of salary rate in salary rate reserve.

(10)(a) The Legislative Budget Commission may authorize increases or decreases in the approved salary rate, except as authorized in s. 216.181(8)(a), for positions pursuant to the request of the agency filed with the Executive Office of the Governor or pursuant to the request of an entity of the judicial branch filed with the Chief Justice of the Supreme Court, if

deemed necessary and in the best interest of the state and consistent with legislative policy and intent.

(11) The Executive Office of the Governor and the Chief Justice of the Supreme Court may approve changes in the amounts appropriated from state trust funds in excess of those in the approved operating budget up to $1 million only pursuant to the federal funds provisions of s. 216.212, when grants and donations are received after April 1, or when deemed necessary due to a set of conditions that were unforeseen at the time the General Appropriations Act was adopted and that are essential to correct in order to continue the operation of government. Changes in the amounts appropriated from state trust funds in excess of those in the approved operating budget which are in excess of $1 million may be approved only by the Legislative Budget Commission pursuant to the request of a state agency filed with the Executive Office of the Governor or pursuant to the request of an entity of the judicial branch filed with the Chief Justice of the Supreme Court. The provisions of this subsection are subject to the notice~~, review,~~ and objection procedures set forth in s. 216.177.

Section 18. Section 216.1811, Florida Statutes, is created to read:

216.1811 Approved operating budgets and appropriations for the legislative branch.--

(1) The Governor and the Chief Financial Officer shall each make changes to the original approved operating budgets for operational and fixed capital expenditures relating to the legislative branch as directed by the presiding officers of the

legislative branch.

(2) The Governor and the Chief Financial Officer shall each ensure that any balances of appropriations made to the legislative branch are carried forward as directed by the presiding officers of the legislative branch.

Section 19. Paragraph (e) of subsection (2) of section 216.1815, Florida Statutes, is amended to read:

216.1815 Agency incentive and savings program.--

(2) To be eligible to retain funds, an agency or the Chief Justice of the Supreme Court must submit a plan and an associated request to amend its approved operating budget to the Legislative Budget Commission specifying:

(e) How the agency or the judicial branch will meet performance standards, including ~~established by the Legislature and~~ those in its long-range program plan; and

Section 20. Section 216.1827, Florida Statutes, is created to read:

216.1827 Requirements for performance measures and standards.--

(1) Agencies and the judicial branch shall maintain a comprehensive performance accountability system containing, at a minimum, a list of performance measures and standards that are adopted by the Legislature and subsequently amended pursuant to this section.

(2)(a) Agencies and the judicial branch shall submit output and outcome measures and standards, as well as historical baseline and performance data, to the Executive Office of the Governor and the Legislature, under s. 216.013.

(b) Agencies and the judicial branch shall also submit performance data, measures, and standards to the Office of Program Policy Analysis and Government Accountability upon request for review of the adequacy of the legislatively approved measures and standards.

(3)(a) An agency may submit requests to delete or amend its existing approved performance measures and standards or submit requests to create additional performance measures and standards to the Executive Office of the Governor for review and approval. The request shall document the justification for the change and ensure that the revision, deletion, or addition is consistent with legislative intent. Revisions or deletions to, or additions of performance measures and standards approved by the Executive Office of the Governor are subject to the review and objection procedure set forth in s. 216.177.

(b) The Chief Justice of the Supreme Court may submit deletions or amendments of the judicial branch's existing approved performance measures and standards or may submit additional performance measures and standards to the Executive Office of the Governor accompanied with justification for the change and ensure that the revision, deletion, or addition is consistent with legislative intent. Revisions or deletions to, or additions of performance measures and standards submitted by the Chief Justice of the Supreme Court are subject to the review and objection procedure set forth in s. 216.177.

(4)(a) The Legislature may create, amend, and delete performance measures and standards. The Legislature may confer with the Executive Office of the Governor for state agencies and

the Chief Justice of the Supreme Court for the judicial branch prior to any such action.

(b) The Legislature may require state agencies to submit requests for revisions, additions, or deletions to approved performance measures and standards to the Executive Office of the Governor for review and approval, subject to the review and objection procedure set forth in s. 216.177.

(c) The Legislature may require the judicial branch to submit revisions, additions, or deletions to approved performance measures and standards to the Executive Office of The Governor, subject to the review and objection procedure set forth in s. 216.177.

(d) Any new agency created by the Legislature is subject to the initial performance measures and standards established by the Legislature. The Legislature may require state agencies and the judicial branch to provide any information necessary to create initial performance measures and standards.

Section 21. Paragraph (a) of subsection (2), subsection (3), paragraph (b) of subsection (4), and subsection (5) of section 216.292, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

216.292 Appropriations nontransferable; exceptions.--

(2) The following transfers are authorized to be made by the head of each department or the Chief Justice of the Supreme Court whenever it is deemed necessary by reason of changed conditions:

(a) The transfer of appropriations funded from identical funding sources, except appropriations for fixed capital outlay,

and the transfer of amounts included within the total original approved budget and plans of releases of appropriations as furnished pursuant to ss. 216.181 and 216.192, as follows:

1. Between categories of appropriations within a budget entity, if no category of appropriation is increased or decreased by more than 5 percent of the original approved budget or $250,000, whichever is greater, by all action taken under this subsection.

2. Between budget entities within identical categories of appropriations, if no category of appropriation is increased or decreased by more than 5 percent of the original approved budget or $250,000, whichever is greater, by all action taken under this subsection.

3. Any agency exceeding salary rate established pursuant to s. 216.181(8) on June 30th of any fiscal year shall not be authorized to make transfers pursuant to subparagraphs 1. and 2. in the subsequent fiscal year.

4. Notice of proposed transfers under subparagraphs 1. and 2. and notice of the specific changed conditions necessitating the action shall be provided to the Executive Office of the Governor and the chairs of the legislative appropriations committees at least 3 working days prior to agency implementation in order to provide an opportunity for review and objection. Such transfers must be consistent with legislative policy and intent and may not adversely affect achievement of approved performance outcomes or outputs in any program. ~~The review shall be limited to ensuring that the transfer is in compliance with the requirements of this paragraph.~~

(3) The following transfers are authorized with the approval of the Executive Office of the Governor for the executive branch or the Chief Justice for the judicial branch, subject to the notice and objection ~~review~~ provisions of s. 216.177:

(a) The transfer of appropriations for operations from trust funds in excess of those provided in subsection (2), up to $1 million.

(b) The transfer of positions between budget entities.

(4) The following transfers are authorized with the approval of the Legislative Budget Commission. Unless waived by the chair and vice chair of the commission, notice of such transfers must be provided 14 days before the commission meeting:

(b) The transfer of appropriations for operations from trust funds in excess of those authorized ~~provided~~ in subsection (2) or subsection (3) ~~this section that exceed the greater of 5 percent of the original approved budget or $1 million~~, as recommended by the Executive Office of the Governor or the Chief Justice of the Supreme Court.

(5) A transfer of funds may not result in the initiation of a fixed capital outlay project that has not received a specific legislative appropriation, except that federal funds for fixed capital outlay projects for the Department of Military Affairs, which do not carry a continuing commitment on future appropriations by the Legislature, may be approved by the Executive Office of the Governor for the purpose received, subject to the notice~~, review,~~ and objection procedures set

forth in s. 216.177.

(7) The provisions of this section do not apply to the budgets for the legislative branch.

Section 22. Effective upon this act becoming a law, subsections (1) and (3) and paragraph (a) of subsection (2) of section 216.301, Florida Statutes, as amended by section 40 of chapter 2005-152, Laws of Florida, are amended to read:

216.301 Appropriations; undisbursed balances.--

(1)(a) As of June 30th of each year, for appropriations for operations only, each department and the judicial branch shall identify in the state's financial system any incurred obligation which has not been disbursed, showing in detail the commitment or to whom obligated and the amounts of such commitments or obligations. Any appropriation not identified as an incurred obligation effective June 30th shall revert to the fund from which it was appropriated and shall be available for reappropriation by the Legislature.

(b) The undisbursed release balance of any authorized appropriation, except an appropriation for fixed capital outlay, for any given fiscal year remaining on June 30 of the fiscal year shall be carried forward in an amount equal to the incurred obligations identified in paragraph (a). Any such incurred obligations remaining undisbursed on September 30 shall revert to the fund from which appropriated and shall be available for reappropriation by the Legislature. The Chief Financial Officer will monitor changes made to incurred obligations prior to the September 30 reversion to ensure generally accepted accounting procedures and legislative intent are followed.

(c) In the event an appropriate identification of an incurred obligation is not made and an incurred obligation is proven to be legal, due, and unpaid, then the incurred obligation shall be paid and charged to the appropriation for the current fiscal year of the state agency or the legislative or judicial branch affected.

~~(1)(a) Any balance of any appropriation, except an appropriation for fixed capital outlay, which is not disbursed but which is expended shall, at the end of each fiscal year, be certified by the head of the affected state agency or the judicial or legislative branches, on or before August 1 of each year, to the Executive Office of the Governor, showing in detail the obligees to whom obligated and the amounts of such obligations. Any such encumbered balance remaining undisbursed on September 30 of the same calendar year in which such certification was made shall revert to the fund from which appropriated, except as provided in subsection (3), and shall be available for reappropriation by the Legislature. In the event such certification is not made and an obligation is proven to be legal, due, and unpaid, then the obligation shall be paid and charged to the appropriation for the current fiscal year of the state agency or the legislative or judicial branch affected.~~

~~(b) Any balance of any appropriation, except an appropriation for fixed capital outlay, for any given fiscal year remaining after charging against it any lawful expenditure shall revert to the fund from which appropriated and shall be available for reappropriation by the Legislature.~~

(d) ~~(c)~~ Each department and the judicial branch shall

maintain the integrity of the General Revenue Fund. Appropriations from the General Revenue Fund contained in the original approved budget may be transferred to the proper trust fund for disbursement. Any reversion of appropriation balances from programs which receive funding from the General Revenue Fund and trust funds shall be transferred to the General Revenue Fund within 15 days after such reversion, unless otherwise provided by federal or state law, including the General Appropriations Act. The Executive Office of the Governor or the Chief Justice of the Supreme Court shall determine the state agency or judicial branch programs which are subject to this paragraph. This determination shall be subject to the legislative consultation and objection process in this chapter. The Education Enhancement Trust Fund shall not be subject to the provisions of this section.

(2)(a) The balance of any appropriation for fixed capital outlay which is not disbursed but expended, contracted, or committed to be expended prior to February 1 of the second fiscal year of the appropriation, or the third fiscal year if it is for an educational facility as defined in chapter 1013 or for a construction project of a state university, shall be certified by the head of the affected state agency or the legislative or judicial branch on February 1 to the Executive Office of the Governor, showing in detail the commitment or to whom obligated and the amount of the commitment or obligation. The Executive Office of the Governor for the executive branch and the Chief Justice for the judicial branch shall review and approve or disapprove, consistent with criteria jointly developed by the

Executive Office of the Governor and the legislative appropriations committees, the continuation of such unexpended balances. The Executive Office of the Governor shall, no later than February 28 ~~20~~ of each year, furnish the Chief Financial Officer, the legislative appropriations committees, and the Auditor General a report listing in detail the items and amounts reverting under the authority of this subsection, including the fund to which reverted and the agency affected.

~~(3) The President of the Senate and the Speaker of the House of Representatives may notify the Executive Office of the Governor to retain certified forward balances from legislative budget entities until June 30 of the following fiscal year.~~

Section 23. Subsection (2) of section 252.37, Florida Statutes, is amended to read:

252.37 Financing.--

(2) It is the legislative intent that the first recourse be made to funds regularly appropriated to state and local agencies. If the Governor finds that the demands placed upon these funds in coping with a particular disaster declared by the Governor as a state of emergency are unreasonably great, she or he may make funds available by transferring and expending moneys appropriated for other purposes, by transferring and expending moneys out of any unappropriated surplus funds, or from the Budget Stabilization Fund. Following the expiration or termination of the state of emergency, the Governor may transfer moneys with a budget amendment, subject to approval by the Legislative Budget Commission, ~~process a budget amendment under the notice and review procedures set forth in s. 216.177 to~~

~~transfer moneys~~ to satisfy the budget authority granted for such emergency.

Section 24. Section 273.02, Florida Statutes, is amended to read:

273.02 Record and inventory of certain property.--The word "property" as used in this section means equipment, fixtures, and other tangible personal property of a nonconsumable and nonexpendable nature. The Chief Financial Officer shall establish by rule the requirements for the recording of property in the state's financial systems and for the periodic review of property for inventory purposes.~~, the value or cost of which is $1,000 or more and the normal expected life of which is 1 year or more, and hardback covered bound books that are circulated to students or the general public, the value or cost of which is $25 or more, and hardback covered bound books, the value or cost of which is $250 or more. Each item of property which it is practicable to identify by marking shall be marked in the manner required by the Auditor General. Each custodian shall maintain an adequate record of property in his or her custody, which record shall contain such information as shall be required by the Auditor General. Once each year, on July 1 or as soon thereafter as is practicable, and whenever there is a change of custodian, each custodian shall take an inventory of property in his or her custody. The inventory shall be compared with the property record, and all discrepancies shall be traced and reconciled. All publicly supported libraries shall be exempt from marking hardback covered bound books, as required by this section. The catalog and inventory control records maintained by~~

~~each publicly supported library shall constitute the property record of hardback covered bound books with a value or cost of $25 or more included in each publicly supported library collection and shall serve as a perpetual inventory in lieu of an annual physical inventory. All books identified by these records as missing shall be traced and reconciled, and the library inventory shall be adjusted accordingly.~~

Section 25. Section 273.025, Florida Statutes, is created to read:

273.025 Financial reporting for recorded property.--The Chief Financial Officer shall establish by rule the requirements for the capitalization of property that has been recorded in the state's financial systems.

Section 26. Subsections (2) and (5) of section 273.055, Florida Statutes, are amended to read:

273.055 Disposition of state-owned tangible personal property.--

(2) Custodians shall maintain records to identify each property item as to disposition. Such records shall comply with rules issued by the Chief Financial Officer ~~Auditor General~~.

(5) All moneys received from the disposition of state-owned tangible personal property or from any agreement entered into under this chapter must be retained by the custodian and may be disbursed for the acquisition of exchange and surplus property and for all necessary operating expenditures~~, and are appropriated for those purposes~~. The custodian shall maintain records of the accounts into which the money is deposited.

Section 27. Section 274.02, Florida Statutes, is amended

to read:

274.02 Record and inventory of certain property.--

(1) The word "property" as used in this section means fixtures and other tangible personal property of a nonconsumable nature ~~the value of which is $1,000 or more and the normal expected life of which is 1 year or more~~.

(2) The Chief Financial Officer shall establish by rule the requirements for the recording of property and for the periodic review of property for inventory purposes. ~~Each item of property which it is practicable to identify by marking shall be marked in the manner required by the Auditor General. Each governmental unit shall maintain an adequate record of its property, which record shall contain such information as shall be required by the Auditor General. Each governmental unit shall take an inventory of its property in the custody of a custodian whenever there is a change in such custodian. A complete physical inventory of all property shall be taken annually, and the date inventoried shall be entered on the property record. The inventory shall be compared with the property record, and all discrepancies shall be traced and reconciled.~~

Section 28. Paragraph (b) of subsection (3) of section 338.2216, Florida Statutes, is amended to read:

338.2216 Florida Turnpike Enterprise; powers and authority.--

(3)

(b) Notwithstanding the provisions of s. 216.301 to the contrary and in accordance with s. 216.351, the Executive Office of the Governor shall, on July 1 of each year, certify forward

all unexpended funds appropriated or provided pursuant to this section for the turnpike enterprise. Of the unexpended funds certified forward, any unencumbered amounts shall be carried forward. Such funds carried forward shall not exceed 5 percent of the original approved ~~total~~ operating budget as defined in s. 216.181(1) of the turnpike enterprise. Funds carried forward pursuant to this section may be used for any lawful purpose, including, but not limited to, promotional and market activities, technology, and training. Any certified forward funds remaining undisbursed on September 30 ~~December 31~~ of each year shall be carried forward.

Section 29. Subsection (4) of section 1011.57, Florida Statutes, is amended to read:

1011.57 Florida School for the Deaf and the Blind; board of trustees; management flexibility.--

(4) Notwithstanding the provisions of s. 216.301 to the contrary, ~~the Executive Office of the Governor shall, on July 1 of each year, certify forward~~ all unexpended funds appropriated for the Florida School for the Deaf and the Blind~~. The unexpended amounts in any fund~~ shall be carried forward and included as the balance forward for that fund in the approved operating budget for the following year.

Section 30. Section 215.29, Florida Statutes, is repealed.

Section 31. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7197 PCB STA 06-03 Governmental Operations/Regulatory Fees
SPONSOR(S): State Administration Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: State Administration Appropriations Committee	8 Y, 0 N	Belcher	Belcher
1) Fiscal Council		Belcher	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill creates section 216.0236, F.S., to require that state agencies review the fees charged for providing regulatory services or regulating businesses and professions. The bill also requires each agency, as part of its legislative budget request, to provide to the Governor and Legislature alternatives for realigning revenues and/or costs to make the regulatory service or program totally self-sufficient or provide justification for a subsidy from other state funds. The bill also requires the Legislature to review the regulatory fee structure for all businesses and professions at least once every 5 years.

The bill has no fiscal impact; however, mandated reviews could result in cost savings or fee adjustments at a future date which could impact state regulatory fee revenues and program costs. Fee adjustments as a result of the review process would impact state-regulated businesses and professions.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED FUNDING:

BACKGROUND

To promote public health, safety, and welfare, the Legislature has authorized programs to regulate various professions, businesses, and products. These programs generally set standards for goods and services, license individuals and businesses that offer them, conduct inspections, and take enforcement actions to ensure compliance with state standards.

Regulatory Program Funding

In December 2005, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued Report No. 05-57, *Legislature Should Consider Uniform Process to Determine Appropriate Regulatory Program Funding Levels*. The report noted that currently, Florida administers 190 regulatory programs. Of the $677 million in total funding for these programs in Fiscal Year 2004-05, general revenue provided $29 million. The report provided the following background information:

- Funding for regulatory programs is derived from three major sources—user charges, federal funds, and general revenue.
- Several factors should be considered in determining how regulatory programs should be funded, including the distribution of benefits, the feasibility of collecting user fees, and the impact of various types of fees on regulated entities.
- In general, user charges should be the primary source of funding for the state's regulatory programs and should be sufficient to cover all of the associated direct and indirect costs, as it helps reduce demands for general revenue funding, recognizes the benefits that regulation provides to regulated entities, and increases accountability because regulated entities help to monitor agency activities to ensure that the services they are funding are cost-effective.

OPPAGA's findings included:

- There is no overall policy for determining appropriate regulatory program funding sources and that most regulatory programs [in Florida] are not currently required to be self-supporting. Less than half (81, or 43%) of the state's 190 regulatory programs are statutorily required to be supported solely by user fees and/or federal funds and, in some cases, programs that are required to be self-supporting nonetheless receive general revenue.
- Current state accounting methods hinder determining appropriate funding levels for regulatory programs as the state's accounting system does not identify the total direct costs for all regulatory programs and agencies are using different methodologies to calculate the indirect costs of these programs.

OPPAGA's report identified several policy options for consideration by the legislature, including:

- Establishing a uniform policy governing regulatory program funding.
- Eliminating statutory caps on the amount of regulatory fees as these limits can become outdated if not updated over time to reflect inflation.

- Revising the legislative budget request instructions to require agencies to provide written justification when requesting general revenue for a regulatory program, which would assist in the determination as to whether the program provides sufficient broad public benefits to justify general revenue funding.
- Revising the legislative budget request instructions to establish a uniform methodology for calculating the cost of regulatory programs.

Regulatory Fee Structure

In December 2002, Senate Interim Project Report No. 2003-139, titled *Fee Equity – Examining the Fairness of Florida's Regulatory Fee Structure* was issued. The report noted that within the State annual budget are scores of separate revenue raising and spending streams. The report provided the following background issues:

- Regulatory fees pose unique sets of issues for the institutions and persons affected by government action through its police power or commerce regulating functions.
- Fees charged for services and for regulation of businesses and professions are set in statute either as a flat fee, a fee cap, or authorization is given to an agency or board to charge a fee to "cover the cost of such service."
- Many fees are capped and require legislation to change the cap.
- Recently some fees charged have been inadequate to cover the true cost of regulation.
- Concerns have been raised when the fees collected do not completely cover the cost of the benefits provided and with the seemingly disparate treatment among those regulated.

The Interim Project report included the following key findings:

- The corresponding costs of providing the regulation of service should be identifiable and relate back to the agency function.
- Generally, the fees set forth in the statute are to pay for certain costs accrued for the regulation of a profession or provision of a service. Because of policy considerations, the fees may not entirely cover the cost of regulating the profession or providing the service.
- Prescribing that all costs of providing a service or of regulating professions be covered requires that all costs be defined and allocated.
- The language for cost recovery varies in the statutes between agencies.
- State agencies perform a broad spectrum of services that can directly benefit a particular entity and at the same time benefit the public as a whole.

The Interim Report made the following recommendations:

- Fee structures should be reviewed to insure consistency with stated policy. Further, with the concept of cost recovery, the appropriateness of fee caps should be reviewed to make sure these upper limits are sufficient to cover all included costs.
- Any review should be tied to an existing systematic and periodic review process. The review should consider all costs of providing a service for which a fee is charged and of regulating professionals. This would assure that all costs are borne solely by those receiving the service or regulation. Sharing the cost among broader sources would have to be justified.

CHANGES PROPOSED BY THE BILL

The bill creates section 216.0236, Florida Statutes, to require each state agency to examine fees charged to regulate and oversee businesses or professions. It also requires that if an agency determines that the fees charged are not adequate to cover program costs and that an appropriation

from other state funds is necessary to supplement the direct or indirect costs for providing regulation and oversight, the agency will present alternatives for realigning revenues and/or costs to make the regulatory service or programs totally self-sufficient or demonstrate that the service or programs provides substantial benefits to the public which justify a subsidy from state funds. The bill requires the agency to present the alternatives to the Governor and the Legislature during the annual submission of their Legislative Budget Request. The bill requires the Legislature to review the alternatives during the next regular session after submission.

The bill also requires the Legislature to review the regulatory fee structure for all businesses and professions at least every 5 year. The schedule for such review may be included in the legislative budget instructions that are developed pursuant to the requirements of s. 216.023, F.S.

C. SECTION DIRECTORY:

Section 1. Creates s. 216.0236, F.S., to provide Legislative intent for funding the regulation of businesses and professions; to require agencies to review regulatory fees and costs annually and provide change alternatives to the Governor and Legislature if fees are not adequate to cover program costs; to require to Legislature to review the regulatory fee structure of all businesses and professions at least once every 5 years.

Section 2. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See D. Fiscal Comments

2. Expenditures:

   See D. Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could result in fee increases that will affect some consumers of the various goods or services provided by regulatory programs that are not currently self-supporting.

D. FISCAL COMMENTS:

It is expected that the review of regulatory fees and costs could impact both state revenues and expenditures at a future date. This is dependent on the results of the reviews and the actions taken by future Legislatures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to governmental operations; creating s. 216.0236, F.S.; providing legislative intent that all costs of providing a regulatory service or regulating a profession or business be borne solely by those who receive the service or who are subject to regulation; requiring each state agency to annually examine the fees it charges for providing regulatory services and oversight to businesses or professions; providing criteria for the examination; requiring, under specified circumstances, that each agency, as part of its legislative budget request, provide to the Governor and the Legislature alternatives to make a regulatory service or program self-sufficient or provide justification for a partial subsidy from other state funds; requiring periodic review of regulatory fees by the Legislature; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 216.0236, Florida Statutes, is created to read:

216.0236 Agency fees for regulatory services or oversight; criteria.--

(1) It is the intent of the Legislature that all costs of providing a regulatory service or regulating a profession or business be borne solely by those who receive the service or who are subject to regulation. It is also the intent of the

Legislature that the fees charged for providing a regulatory service or regulating a profession or business be reasonable and take into account the differences between the types of professions or businesses being regulated. Moreover, it is the intent of the Legislature that state agencies operate as efficiently as possible and regularly report to the Legislature additional methods by which to streamline their operational costs.

(2) In accordance with the instructions for legislative budget requests, each state agency shall annually examine the fees it charges for providing regulatory services and oversight to businesses or professions. The annual examination shall determine whether operational efficiencies can be achieved in the regulatory program under examination, whether the regulatory activity is an appropriate function that the agency should continue at its current level, and whether the fees charged for each regulatory program are:

(a) Based on revenue projections that are prepared using generally accepted governmental accounting procedures or official estimates by the Revenue Estimating Conference, if applicable.

(b) Adequate to cover both the direct and indirect costs of providing the regulatory service or oversight.

(c) Reasonable and take into account differences between the types of professions or businesses that are regulated.

(3) If the agency determines that the fees charged for regulatory services or oversight to businesses or professions are not adequate to cover program costs and that an

appropriation from other state funds is necessary to supplement the direct or indirect costs of providing a regulatory service or program, the agency shall present to the Governor and the Legislature as part of its legislative budget request information regarding alternatives for realigning revenues and costs to make the regulatory service or program totally self-sufficient or shall demonstrate that the service or program provides substantial benefits to the public that justify a partial subsidy from other state funds. The Legislature shall review the alternatives during the next regular session of the Legislature.

(4) The Legislature shall review the regulatory fee structure for all businesses and professions at least once every 5 years. The schedule for such review may be included in the legislative budget instructions developed pursuant to the requirements of s. 216.023.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7207 PCB AGEA 06-01 Relating to Water Management Districts
SPONSOR(S): Agriculture & Environment Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2484

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Agriculture & Environment Appropriations Committee	10 Y, 0 N	Dixon	Dixon
1) State Resources Council	9 Y, 0 N	Lotspeich	Hamby
2) Fiscal Council		Dixon	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill amends current law to require the legislature to annually review the authorized millage rate for each water management district and annually set the amount of revenue authorized to be raised by each district from the taxes authorized by Chapter 373, F.S. However, the maximum millage rate for each district cannot exceed the rate established in subsection 373.503(3), F.S.

The bill revises the fiscal year for the water management districts from October 1 through September 30 to July 1 through June 30, and revises the water management district budget review process accordingly.

The bill has no fiscal impact.

This bill takes effect July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The legislature will review the water management districts' millage rates each year and set the amount of revenue each can raise.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Water Management District Millage Rates

Article VII, Section 9(b) of the Florida Constitution provides that ad valorem taxes may be levied for water management purposes in amounts no greater than 0.05 mills for the northwest portion of the state and no greater than 1.0 mill for the remainder of the state.

The legislature has created five water management districts.[1] The legislature has declared that the millage authorized for water management purposes by the state constitution shall only be levied by the five water management districts.[2] The districts may levy ad valorem taxes on property within the district solely for the purposes of water management as set forth by the legislature.[3]

The legislature has authorized millage rates for the districts that are equal to or less than the maximum allowed by the state constitution.[4] The current maximum total millage rate for each district is:

1. Northwest Florida Water Management District: 0.05 mill.
2. Suwannee River Water Management District: 0.75 mill.
3. St. Johns River Water Management District: 0.6 mill.
4. Southwest Florida Water Management District: 1.0 mill.
5. South Florida Water Management District: 0.80 mill.

The water management districts are special taxing districts.[5] A special taxing district may not be created with general taxing authority, and may be empowered to levy only those taxes bearing a substantial relation to the special purpose of the taxing district.[6]

The legislature has determined that the ad valorem taxes which the water management districts are authorized to levy are in proportion to the benefits to be derived by the real estate within the districts.[7]

Water Management District Budget Review

Background

The process for the adoption of water management district budgets originated in 1949 with the creation of flood control districts under Chapter 378, F.S.[8] Under that process, the fiscal year for the flood

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[1] Section 373.069, F.S.
[2] Paragraph 373.503(2)(a), F.S.
[3] Paragraph 373.503(3)(a), F.S.
[4] Id.
[5] Paragraph 189.403(6), F.S.
[6] Crowder v. Phillips, 146 Fla. 440, 1 So. 2d 629 (1941); State ex rel. City of Gainesville v. St. Johns River Water Management Dist., 408 So. 2d 1067 (Fla. Dist. Ct. App. 1st Dist. 1982).
[7] Subsection 373.503(4), F.S.
[8] s. 28, ch. 25209, 1949 Laws of Florida

control districts was July 1 through June 30. No executive or legislative branch review of the budgets was provided for in statute. In 1972, the Water Resources Act of 1972 created the five water management districts and incorporated the budget review provisions of Chapter 378, F.S., into Part V of Chapter 373, F.S., creating section 373.536, F.S.[9] No change was made to the fiscal year or to the review process.

As part of an omnibus finance and taxation bill in 1974 addressing numerous issues relating to ad valorem taxation, the fiscal year for the water management districts was changed to October 1 through September 30.[10]

In 1991, subsection (5) was added to s. 373.536, F.S., to require that all water management district "tentative" budgets be submitted to the Department of Environmental Regulation (the predecessor agency to the current Department of Environmental Protection) by August 5 of each year.[11] The DER was to review the budgets and submit comments to the governing board and to the Governor by September 5. Prior to December 15, the DER was to file with the Governor and the legislature a report summarizing "the expenditures of the districts by program area."

Paragraph 373.536(5)(a), F.S., was amended in 1993 to require that the tentative budgets also be submitted to the Governor's Office and the chairs of the appropriations committees in the Senate and House by August 5.[12] Paragraph 373.536(5)(b), F.S., was also amended in order to allow the Governor's Office and the appropriations chairs to submit comments to the district governing boards by September 5.

In 1994, the legislature created the Water Management District Review Commission to perform a comprehensive review of Florida's water management system including consideration of ways to improve financial and programmatic accountability of districts and potential revision of the districts' budget development and adoption procedures.[13] The Commission made several recommendations including:

- The Governor should approve or reject the annual budget of each water management district.
- The Executive Office of the Governor should establish permanent position(s) to review the financial and programmatic activities of Florida's five water management districts. The position(s) should further serve as Executive Branch liaison to, and coordinate appropriate review deadlines and notices with, the legislative committees having substantive and appropriation jurisdiction over water management districts.
- Each district should provide a copy of its proposed budget, the past year's expenditures, and its annual in-house financial audit to the Governor, the President of the Senate, the Speaker of the House, the chairs of all legislative committees and sub-committees with substantive or appropriation jurisdiction over water management districts, the Secretary of the Department of Environmental Protection, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district ("the entities"). The district should [shall] respond in writing to each comment received from any of the entities, and should [shall] furnish copies of those comments and written responses to all entities.

The Commission had a 1996 legislative package to implement its recommendations. While the bulk of the recommendations failed to pass, s. 373.536, F.S., was amended in 1996 to authorize the Governor to "approve or disapprove, in whole or in part, the budget of each water management district."[14] The

[9] s. 25, ch. 72-299, Laws of Florida
[10] s. 18, ch. 74-234, Laws of Florida
[11] s. 9, ch. 91-288, Laws of Florida
[12] s. 24, ch. 93-213, Laws of Florida
[13] ch. 94-270, Laws of Florida
[14] s. 5, ch. 96-339, Laws of Florida

Governor was also required to "develop a process to facilitate review and communication regarding water management district budgets."

The stakeholders involved with the work of the Water Management District Review Commission continued to work on the concepts and language during the 1996-97 interim. This work resulted in legislation in 1997. The 1997 legislation further amended s. 373.536, F.S., to require that the tentative budgets be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees, as well as to the Secretary of the Department of Environmental Protection, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district.[15]

Current Law

Under current law, the fiscal year for the water management districts is from October 1 through September 30.[16] In this fiscal year cycle, the first step is for the budget officer of each water management district to submit to the governing board of the district by July 15 a tentative budget for the fiscal year beginning October 1.[17]

By August 1, a copy of the tentative budget is to be provided by the district to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees.[18] The House and Senate appropriations chairs may submit comments and objections on the proposed budgets to the districts by September 5.[19] In its adoption of the final budget, the governing board must include a written response to any comments or objections of the appropriation chairs. The record of the governing board meeting adopting the final budget is required to be transmitted to the Governor, and the chairs of the appropriation committees.[20]

Before December 15, the Governor's Office is required to file with the legislature a report that summarizes its review of the tentative budgets.[21]

EFFECT OF PROPOSED CHANGES

Millage Rates

The bill provides that in order to insure that the taxes authorized by Chapter 373, F.S., continue to be in proportion to the benefits derived of real estate within the districts, the legislature is required to annually review the authorized millage rate for each district and annually set the amount of revenue authorized to be raised by each district from the taxes authorized by Chapter 373, F.S. However, the maximum millage rate for each district cannot exceed the rate currently established in subsection 373.503(3), F.S.

Should the legislature not set the revenue in any year by July 1, the bill contains a contingency provision allowing the districts to raise revenues equal to those authorized in the preceding fiscal year with an adjustment for the percentage change in the Consumer Price Index for the preceding fiscal year.

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[15] s. 16, ch. 97-160, Laws of Florida
[16] Subsection 373.536(1), F.S.
[17] Subsection 373.536(2), F.S.
[18] Paragraph 373.536(5)(c), F.S.
[19] Paragraph 373.536(5)(e), F.S.
[20] Id.
[21] Paragraph 373.536(5)(f), F.S.

Budget Review

In order to facilitate the legislature's annual review of the millage rate, the bill revises the water management district fiscal year to have it run concurrent with the state fiscal year; that is, from July 1 through June 30.

The bill removes the current requirement that the tentative budget be submitted to the governing board by July 15, and changes from August 1 to February 1 the date by which the tentative budgets are to be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of all substantive and fiscal committees.

The bill also changes the date by which the Governor's Office must submit its report summarizing the district budgets from December 15 to September 15.

C. SECTION DIRECTORY:

Section 1. Amends section 373.503, F.S., relating to water management districts millage rates.

Section 2. Amends section 373.536, F.S., relating to the fiscal year of the water management districts.

Section 3. Provides that each district should begin planning for the change in fiscal year.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See Fiscal Comments

2. Expenditures:

   See Fiscal Comments

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

D. FISCAL COMMENTS:

The bill provides for the legislature to annually review the millage rates and set the amount of revenue the five water management districts can raise. This could have the impact of lowering property taxes or raising property taxes within the water management districts.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

No rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

A bill to be entitled

An act relating to water management districts; amending s. 373.503, F.S.; providing that a water management district's millage rate is subject to annual authorization by the Legislature; requiring the Legislature to annually review a district's millage rate; requiring the Legislature to annually set the amount of revenue authorized to be raised by a district from ad valorem taxes; providing for the amount of authorized revenue to be raised by a district if the Legislature does not set the amount by a specified date; amending s. 373.536, F.S.; revising the beginning and ending dates of a district's fiscal year; revising the date by which a district must submit a tentative budget to the Governor and the Legislature; eliminating the authorization for the Legislature to comment on such budgets; eliminating the requirement for districts to respond to such comments and to forward such responses to the Governor and Legislature; revising the date by which the Executive Office of the Governor must file a specified report with the Legislature; directing districts to implement conforming measures; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 373.503, Florida Statutes, is amended, subsection (5) is

renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

373.503 Manner of taxation.--

(3)(a) Subject to annual authorization by the Legislature to levy ad valorem taxes under subsection (5), the districts may levy ad valorem taxes on property within the district solely for the purposes of this chapter and of chapter 25270, 1949, Laws of Florida, as amended, and chapter 61-691, Laws of Florida, as amended. The authority to levy ad valorem taxes as provided in this act shall commence with the year 1977. However, the taxes levied for 1977 by the governing boards pursuant to this section shall be prorated to ensure that no such taxes will be levied for the first 4 days of the tax year, which days will fall prior to the effective date of the amendment to s. 9(b), Art. VII of the State Constitution, which was approved March 9, 1976. When appropriate, taxes levied by each governing board may be separated by the governing board into a millage necessary for the purposes of the district and a millage necessary for financing basin functions specified in s. 373.0695. ~~Beginning with the taxing year 1977, and~~ Notwithstanding the provisions of any other general or special law to the contrary and subject to annual authorization by the Legislature to levy ad valorem taxes under subsection (5), the maximum total millage rate for district and basin purposes shall be:

1. Northwest Florida Water Management District: 0.05 mill.
2. Suwannee River Water Management District: 0.75 mill.
3. St. Johns River Water Management District: 0.6 mill.
4. Southwest Florida Water Management District: 1.0 mill.

5. South Florida Water Management District: 0.80 mill.

(5) To ensure that the taxes authorized by this chapter continue to be in proportion to the benefits derived by the several parcels of real estate within the districts, the Legislature shall annually review the authorized millage rate for each district and annually set the amount of revenue authorized to be raised by each district from the taxes authorized by this chapter. However, if the annual amount of revenue authorized to be raised by each district is not set by the Legislature on or before July 1 of each year, each district is authorized to raise the amount of revenue authorized by the Legislature in the preceding fiscal year and adjusted by the percentage change in the Consumer Price Index for the preceding fiscal year.

Section 2. Subsections (1) and (2) and paragraphs (c), (e), and (f) of subsection (5) of section 373.536, Florida Statutes, are amended to read:

373.536 District budget and hearing thereon.--

(1) FISCAL YEAR.--The fiscal year of districts created under the provisions of this chapter shall extend from July ~~October~~ 1 of one year through June ~~September~~ 30 of the following year.

(2) BUDGET SUBMITTAL.--The budget officer of the district shall~~, on or before July 15 of each year,~~ submit for consideration by the governing board of the district a tentative budget for the district covering its proposed operations and funding requirements for the ensuing fiscal year.

(5) TENTATIVE BUDGET CONTENTS AND SUBMISSION; REVIEW AND APPROVAL.--

(c) Each water management district shall, by February ~~August~~ 1 of each year, submit for review a tentative budget to the Governor, the President of the Senate, the Speaker of the House of Representatives, the chairs of all legislative committees and subcommittees with substantive or fiscal jurisdiction over water management districts, as determined by the President of the Senate or the Speaker of the House of Representatives as applicable, the secretary of the department, and the governing body of each county in which the district has jurisdiction or derives any funds for the operations of the district.

~~(e) By September 5 of the year in which the budget is submitted, the House and Senate appropriations chairs may transmit to each district comments and objections to the proposed budgets. Each district governing board shall include a response to such comments and objections in the record of the governing board meeting where final adoption of the budget takes place, and the record of this meeting shall be transmitted to the Executive Office of the Governor, the department, and the chairs of the House and Senate appropriations committees.~~

(e) ~~(f)~~ The Executive Office of the Governor shall annually, on or before September ~~December~~ 15, file with the Legislature a report that summarizes its review of the water management districts' tentative budgets and displays the adopted budget allocations by program area. The report must identify the districts that are not in compliance with the reporting

requirements of this section. State funds shall be withheld from a water management district that fails to comply with these reporting requirements.

Section 3. For the 2006-2007 and 2007-2008 fiscal years, notwithstanding any law to the contrary, the water management districts are directed to budget and plan for their fiscal management to conform to the provisions of this act.

Section 4. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7213 PCB TEDA 06-01 Quick Action Closing
SPONSOR(S): Transportation & Economic Development Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Transportation & Economic Development Appropriations Committee	15 Y, 0 N	McAuliffe	Gordon
1) Economic Development, Trade & Banking Committee	10 Y, 0 N	Carlson	Carlson
2) Fiscal Council		McAuliffe	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill provides new eligibility criteria for projects funded by the Quick Action Closing Fund. The new criteria requires eligible projects to:

- Be in a targeted high-growth and high-wage industry.
- Have a positive return on investment of at least five to one.
- Be an inducement for expansion or location in Florida.
- Pay an annual wage at least 125 percent of the private sector average wage.
- Be supported by the local community.

The bill provides that Enterprise Florida Inc. (EFI), shall determine the eligibility of each project based on the new criteria; however, EFI, in consultation with the Office of Tourism Trade and Economic Development may waive the criteria based on extraordinary circumstances when the project would significantly benefit the local or regional economy.

The bill also requires the Governor to consult directly with the Speaker of the House of Representatives and the President of the Senate before giving approval for a project.

The bill provides an appropriation of $50 million in general revenue to the Quick Action Closing Fund.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government – The bill increases eligibility criteria for projects funded by the Quick Action Closing Fund and provides an increased appropriation to the fund over prior fiscal years.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

The 1999 Legislature created the Quick Action Closing Fund (s. 288.1088, F.S.) within the Office of Tourism, Trade and Economic Development (OTTED) for the purpose of helping Florida to compete for high-impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities. Enterprise Florida, Inc. (EFI), evaluates proposals for the use of the Quick Action Closing Fund (QACF), makes recommendations to OTTED, and describes the nature of the business and its products or services, the number of jobs to be created and the annual average wages of the jobs, the cumulative amount of investment, the impacts of the business at the regional or state level or upon the state's universities and community colleges, and what role the incentive is expected to play in the business's decision to locate or expand in the state, or for a private investor to provide critical rural infrastructure.

Currently, eligibility criteria for projects funded by QACF are not provided in statute, but the criteria used by EFI require a project to:

- Be in a targeted industry as referenced in s. 288.106, F.S.;
- Have a positive payback ratio;
- Create 10 new jobs, and if an expansion, must expand jobs by at least 10 percent; and
- Pay an average annual wage at least 115 percent of the area or statewide private sector average wage.

Once EFI makes its evaluation and recommendation to OTTED, the director of OTTED must make a recommendation of approval or disapproval to the Governor. OTTED must also provide the Governor with proposed performance conditions that the project must meet to obtain the incentive funds.

The Governor must consult with the President of the Senate and the Speaker of the House of Representatives before giving final approval for using the QACF for the project and must recommend approval of the project and release of moneys from the QACF pursuant to legislative consultation and review requirements of s. 216.177, F.S.

Once approved by the Governor, OTTED enters into a contract with the business and establishes the conditions for the payment of moneys from the QACF. Conditions in the contract include those factors identified by EFI in its request to OTTED and also include sanctions for failure to meet performance conditions. EFI is responsible for validating the performance of the contract and reporting to the Governor and the Legislature within 6 months after contract completion.

According to EFI's 2005 Incentives Report, the QACF assisted seven businesses with locating or expanding in Florida. These businesses are creating and retaining 2,818 high quality jobs in Florida at an average expected wage of $45,273. In fiscal year 2005-2006, the QACF was appropriated $10 million.

Effect of Proposed Changes:

This bill provides new eligibility criteria for projects funded by the Quick Action Closing Fund. The new criteria requires eligible projects to:

- Be in a targeted high-growth and high-wage industry.
- Have a positive return on investment of at least five to one.
- Be an inducement for expansion or location in Florida.
- Pay an annual wage at least 125 percent of the private sector average wage.
- Be supported by the local community.

The bill provides that EFI shall determine the eligibility of each project based on the new criteria; however, EFI, in consultation with the Office of Tourism Trade and Economic Development may waive the criteria based on extraordinary circumstances when the project would significantly benefit the local or regional economy. The bill also requires the Governor to consult directly with the House Speaker and the Senate President before giving approval for a project.

The bill provides an appropriation of $50 million in general revenue to the QACF.

C. SECTION DIRECTORY:

Section 1. Amends s. 288.1088, F.S., providing new criteria for eligibility for the QACF.

Section 2. Provides a $50 million appropriation.

Section 3. Provides this bill will take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides an appropriation of $50 million in general revenue to the QACF.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that qualify for funding through the QACF will benefit from state funding for locating or expanding their company in Florida.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 34 of the bill uses the term "extraordinary circumstances" to describe the condition under which OTTED and EFI may waive eligibility criteria for an award under QACF. This term is not defined and may not provide sufficient guidance as to what constitutes the proper conditions for waiver.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the Quick Action Closing Fund; amending s. 288.1088, F.S.; providing eligibility criteria for receipt of funds; requiring Enterprise Florida, Inc., to determine eligibility using specified criteria; providing for waiver of eligibility criteria under certain circumstances; requiring the Governor to provide evaluations of certain projects to the President of the Senate and the Speaker of the House of Representatives; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) and paragraphs (a) and (b) of subsection (3) of section 288.1088, Florida Statutes, are amended to read:

288.1088 Quick Action Closing Fund.--

(2) There is created within the Office of Tourism, Trade, and Economic Development the Quick Action Closing Fund. Projects eligible for receipt of funds from the Quick Action Closing Fund shall:

(a) Be in a targeted industry as referenced in s. 288.106.

(b) Have a positive payback ratio of at least 5 to 1.

(c) Be an inducement to the project's location or expansion in the state.

(d) Pay an average annual wage of at least 125 percent of the areawide or statewide private-sector average wage.

(e) Be supported by the local community in which the project is to be located.

(3)(a) Enterprise Florida, Inc., shall determine eligibility of each project consistent with the criteria in subsection (2). Enterprise Florida, Inc., in consultation with the Office of Tourism, Trade, and Economic Development, may waive these criteria based on extraordinary circumstances when the project would significantly benefit the local or regional economy. Enterprise Florida, Inc., shall evaluate individual proposals for high-impact business facilities and forward recommendations regarding the use of moneys in the fund for such facilities to the director of the Office of Tourism, Trade, and Economic Development. Such evaluation and recommendation must include, but need not be limited to:

1. A description of the type of facility or infrastructure, its operations, and the associated product or service associated with the facility.

2. The number of full-time-equivalent jobs that will be created by the facility and the total estimated average annual wages of those jobs or, in the case of privately developed rural infrastructure, the types of business activities and jobs stimulated by the investment.

3. The cumulative amount of investment to be dedicated to the facility within a specified period.

4. A statement of any special impacts the facility is expected to stimulate in a particular business sector in the state or regional economy or in the state's universities and community colleges.

5. A statement of the role the incentive is expected to play in the decision of the applicant business to locate or expand in this state or for the private investor to provide critical rural infrastructure.

(b) Upon receipt of the evaluation and recommendation from Enterprise Florida, Inc., the director shall recommend approval or disapproval of a project for receipt of funds from the Quick Action Closing Fund to the Governor. In recommending a project, the director shall include proposed performance conditions that the project must meet to obtain incentive funds. The Governor shall provide the evaluations of projects recommended for approval to the President of the Senate and the Speaker of the House of Representatives and consult directly with the President of the Senate and the Speaker of the House of Representatives before giving final approval for a project. The Executive Office of the Governor shall recommend approval of a project and the release of funds pursuant to the legislative consultation and review requirements set forth in s. 216.177. The recommendation must include proposed performance conditions that the project must meet in order to obtain funds.

Section 2. There is appropriated $50 million from nonrecurring funds from the General Revenue Fund in fiscal year 2006-2007 to the Quick Action Closing Fund for the 2006-2007 fiscal year.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7235 PCB JA 06-01 Continuing Implementation of Constitutional Revision 7 to Article V
SPONSOR(S): Judiciary Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Judiciary Appropriations Committee	4 Y, 0 N, w/CS	Brazzell	DeBeaugrine
1) Fiscal Council		Brazzell	Kelly
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

In November 1998, voters approved Revision 7 to Article V of the Florida Constitution. Article V establishes the judicial branch of government. According to the ballot summary, Revision 7 "allocates state court system funding among the state, counties, and users of courts." Revision 7 was to be "fully effectuated" by July 1, 2004.

The bill addresses a variety of issues with budgetary impacts related to the implementation of Revision 7 to Article V of the state constitution. The bill:

- Clarifies that parents of juveniles involved in delinquency proceedings are responsible for payment of costs of prosecution and representation under certain circumstances;
- Revises the budgeting and reporting procedures for clerks of court;
- Amends the procedure for identifying counties which do not budget sufficient funds to fulfill their responsibilities for court funding under s. 29.008(1), F.S., and for rectifying such situations;
- Provides additional requirements for disclosure by clerks when individuals are posting bond monies that may be used to pay for the detainee's other outstanding court obligations;
- Requires the allocation of a payment by a misdemeanant probationer among that individual's outstanding obligations;
- Redirects the $2.00 court technology fee currently paid to counties for funding their court-related technology obligations to a trust fund for distribution to counties as grants-in-aid under certain conditions and revises the process for spending those funds;
- Clarifies counties' reporting responsibilities regarding their use of funds generated by surcharges imposed to fund state court facilities; and
- Moves certain provisions of law relating to court costs into chapter 938, F.S.

The bill appears to have a fiscal impact on state government and counties. See "Fiscal Analysis and Economic Impact Statement."

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill reduces the duties of the Department of Revenue regarding the review of county budgets for funding court-related responsibilities and institutes a new process for this review involving the Administration Commission. The bill establishes new advisory boards in each judicial circuit.

B. EFFECT OF PROPOSED CHANGES:

Payment of Fees for Representation and Prosecution

Present Situation

Currently, certain sections of Florida law provide for the repayment of the costs of prosecution and representation by certain persons in certain proceedings; however, some have interpreted these sections as not applying to juveniles in certain delinquency proceedings.

Proposed Changes

The bill amends ss. 27.52 and 938.27, F.S., to clarify that parents of adjudicated juveniles are responsible for certain costs, including costs of representation and the costs of prosecution, respectively. It amends ss. 28.35 and 938.27, F.S., to allow enrollment of such parents in payment plans to repay these costs under certain conditions.

Clerks of Court Court-Related Budget Process

Present Situation

Currently, s. 28.35, F.S., establishes the Florida Clerks of Court Operations Corporation (corporation) and, among other provisions, assigns it various duties relating to reviewing and certifying clerks' proposed court-related budgets. Section 28.36, F.S., provides the process to be used in setting clerks' court-related budgets. This process uses formulae to determine the maximum annual budget amount allowed a clerk, though under certain conditions the Legislative Budget Commission may approve increases to individual clerks' budgets. Any unspent revenues are to be provided to the General Revenue Fund. Outside of these general limitations, however, each clerk has significant autonomy in how he or she expends state funds. This has allowed some clerks to make spending decisions that have been questioned and has resulted in less revenue being provided to the General Revenue Fund. The corporation did not respond to requests for information on one such incident because of the perception that providing this information was outside the scope of its duties and responsibilities.

Proposed Changes

The bill amends ss. 28.25 and 28.36, F.S to provide for more detailed reporting by clerks about their specific proposed and actual expenditures and requires the corporation's approval for a clerk's certified budget to be amended except in those situations when the Legislative Budget Commission's approval is required. The PCB also adds the responsibility of responding to Legislative inquiries regarding clerk budgets to the corporation's statutory duties and responsibilities.

Department of Revenue Oversight of County Article V Budgets

Present Situation

Currently s. 29.008(4), F.S., provides a process for the Department of Revenue (DOR) to review whether counties are budgeting sufficient funding for certain court-related responsibilities under s. 29.008(1), F.S. The statute provides a formula that dictates the minimum amount a county must budget, requires the submission of budget documents to the DOR, and, if the DOR finds that the county is not meeting its requirement to budget sufficient funds, requires the DOR to withhold other funds that would otherwise be remitted to a county and instead pay the county's unbudgeted court-related funding obligations. The DOR reviewed this process, and in its report *Reporting and Oversight of County Court-Related Funding Obligations: Review and Recommendations* (November 15, 2005), highlighted problems with the current process. Among other recommended changes, DOR suggests that the agency be relieved of its obligation to determine county compliance with their budgeting responsibilities, in part because the agency believes the review duplicates another required to be conducted by the Chief Financial Officer (CFO) and that the duty falls within the core competency of the Department of Financial Services.

Proposed Changes

The bill adopts the DOR's recommendation to end the DOR's responsibility to determine county compliance with their budgeting responsibilities by replacing DOR review of county budgets with a process similar to that provided in s. 30.49, F.S., for sheriffs to appeal what they believe to be inadequate county funding. The new process requires the chief judge of the circuit to detail the deficiencies expected to result from the lack of funding and the funding required to correct them and provide this to the board of county commissioners (board). If the board does not respond to the chief judge's satisfaction, the chief judge may appeal to the Administration Commission, whose decision is final.

Payment of Outstanding Obligations from Posted Bond

Present Situation

Currently s. 903.286, F.S., requires the clerk of court to withhold outstanding court fees, court costs, and criminal penalties from a cash bond posted by someone other than a bail bond agent. Thus the person posting bond may not be returned the full amount of the bond if outstanding court fees, court costs, and criminal penalties exist. However, the section does not require the clerk to provide notice to the person posting the bond that such obligations may be withheld.

Proposed Changes

The bill requires clerks of court to inform persons posting bond that outstanding court fees, court costs, and criminal penalties may be withheld and to provide an itemized listing of these amounts so that persons posting bond are aware of the total that would be withheld from the posted bond. The PCB also specifies that the clerk may only withhold these monies from bonds posted after June 30, 2005, as July 1, 2005, was the effective date of the statute allowing the withholding of these monies.

Article V Technology Funding

Present Situation

Section 29.008(1), F.S., provides that "Counties are required by s. 14, Art. V of the State Constitution to fund the cost of communications services, existing radio systems, existing multiagency criminal justice information systems . . ." Section 29.008(f)2., F.S., defines "communication services" to include "all

computer networks, systems and equipment, including computer hardware and software, modems printers, wiring, network connections, maintenance, support staff or services. . . training, supplies, and line charges necessary for an integrated computer system to support the operations and management of the state courts system, the offices of the public defenders, the offices of the state attorneys, and the offices of the clerks of the circuit and county courts and the capability to connect those entities . . . " Section 29.008(h), F.S., defines "existing multiagency criminal justice information systems."

Section 28.24(12)(e)1., F.S., provides for $2.00 of a $4.00 per page service charge for certain documents filed with the clerk of court to be distributed to the board of county commissioners to be used for court-related technology and court technology needs as defined in s. 29.008(1)(f)2. and (h), F.S. According to the Florida Association of Court Clerks and Comptrollers, in calendar year 2005, this fee generated $85.4 million for counties.

Section 29.0086, F.S., establishes the Article V Technology Board. Section 29.0086(5)(c), F.S., required the Article V Technology Board to issue a report by January 15, 2006, which, among other requirements, was to "propose an operational governance structure to achieve and maintain the necessary level of integration among system users at both the state and judicial circuit levels . . ." Accordingly, the Article V Technology Board's report recommended the establishment of a statewide governing board and judicial circuit governing boards. The report also recommended that the $2.00 fee administered at the county level be administered on a judicial circuit level by a joint committee composed of the chief judge, state attorney, and public defender.

Proposed Changes

The bill extends the term of the Article V Technology Board through December 31, 2006. The bill also requires the establishment of Judicial Circuit Article V Technology Advisory Councils (advisory councils) in each circuit chaired by the chief judge or his or her designee and including as members the public defender, state attorney, Florida Bar representative, sheriff, clerk, and a county representative. The primary responsibilities of the advisory councils are to develop an initial strategic plan and subsequent updated strategic plans to address court-related technology and court technology needs as defined in s. 29.008(1)(f)2 and (h), F.S., and to promote data integration and access among the stakeholders in the court system. The bill increases and redirects the $2.00 per page fee currently provided to the boards of county commissioners to the Court Technology Trust Fund and provides that the fee may be disbursed as grants-in-aid to counties which agree to use these funds to implement the strategic plan developed by the advisory councils and approved by the chief judge.

Reporting on County-Imposed Surcharges

Present Situation

Currently, the clerks of court are required to report quarterly on the amount of funds collected by counties pursuant to s. 318.18(13)(a) and (b), F.S.

Proposed Changes

The bill amends s. 318.18(13), F.S., to provide that the county, rather than the clerk of court, report on the funds collected by the county. The bill also requires additional reporting by the county on the amount of funds expended and the uses of the funds.

Payment of Obligations by Misdemeanant Probationers

Present Situation

Currently, counties handle in a variety of ways the collection of certain court-related obligations from the misdemeanant probationers they supervise either using county staff or via a contract with another

entity. These obligations include fees for supervision as well as restitution, fines, fees, and court costs. In at least one county, during the period of supervision only the supervision fee is being collected, delaying the collection of payments for the probationer's other obligations.

Proposed Changes

The bill amends s. 948.15, F.S., to provide that entities providing probation services for offenders sentenced by the county court shall establish a process to collect outstanding obligations, including fines, fees, and court costs, restitution, and the cost of supervision. It also provides that if any payment made by a misdemeanant probationer is insufficient to cover the amount of the obligations then due, the payment will be allocated proportionally among the probationer's obligations.

Transfer and Renumbering of Court Cost-related Statutory Provisions

The bill also transfers and renumbers s. 775.083(2), F.S., relating to court costs collected to fund county crime prevention programs, to chapter 938, F.S., and renumbers s. 939.185, F.S., regarding county-authorized court costs to fund various court-related programs, also to place it in chapter 938, F.S. Chapter 938, F.S., addresses court costs.

C. SECTION DIRECTORY:

Section 1 amends s. 27.52, F.S., providing for liability for fees, costs, and charges of representation in delinquency proceedings.

Section 2 amends s. 27.561, F.S., to require defendant-recipients or parents defaulting on payment of attorney's fees or costs to enroll in a payment plan under certain circumstances

Section 3 amends s. 28.35, F.S., creating additional duties of the Florida Clerks of Court Operations Corporation.

Section 4 amends s. 28.36, F.S., regarding the clerks of court budget process.

Section 5 amends s. 29.008, F.S., to revise the process for determining and compelling county compliance with their Article V funding responsibilities.

Section 6 amends s. 903.286, F.S., to provide additional notice requirements for persons posting cash bonds.

Section 7 amends s. 28.24, F.S., regarding the distribution and use of the $2.00 fee directed to counties for funding court-related technology and court technology needs.

Section 8 amends s. 29.0086, F.S., repealing the Article V Technology Board effective January 1, 2007.

Section 9 creates s. 29.0087, F.S., to establish in each judicial circuit a Judicial Circuit Article V Technology Advisory Council and provide for membership, purposes, and duties.

Section 10 amends s. 318.18, F.S., to require counties rather than clerks of court to report information regarding their collection and use of surcharges to fund court facilities.

Section 11 amends s. 938.27, F.S., to require parents of adjudicated juveniles to enroll in payment plans to pay certain costs of prosecution.

Section 12 amends s. 938.29, F.S., to require defendants found to have committed a delinquent act who have received the assistance of the public defender's office or a court-appointed attorney to be liable for payment of attorney's fees and costs.

Section 13 amends s. 948.15, F.S., regarding the collection of obligations from misdemeanant county probationers.

Section 14 renumbers s. 939.185, F.S., as s. 938.195, F.S.

Section 15 transfers, renumbers, and amends s. 775.083 (2), F.S., as s. 938.065, F.S.

Section 16 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The state may realize additional revenue from payments by certain parents of juveniles involved in delinquency proceedings for costs of prosecution and representation.

   The state will also receive proceeds from the $2.05 recording fee which will be deposited into the Court Technology Trust Fund. In calendar year 2005, when set at $2.00, this fee generated $85.4 million.

   Collection of court costs and fines may increase due to the change in the collections procedure.

2. Expenditures:

   The extension of the Article V Technology Board through December 31, 2006, is estimated to require $250,000 in General Revenue.

   The bill also provides for state financial assistance to counties from the Court Technology Trust Fund. At current levels of collections, expenditures from the trust fund would be approximately $85 million per year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill changes the distribution of the $2.00 technology fee that is currently provided directly to counties to a grant-in-aid to be paid upon the counties' compliance with certain requirements. If counties choose not to comply with these requirements, they could experience a reduction in revenues.

   The bill modifies the process for finding that counties are not in compliance with their responsibilities for funding certain court-related items such that counties may be less vulnerable to withholding of other revenues by the Department of Revenue to pay for funding such items, since a more detailed process would need to be followed before any withholdings occurred.

   Counties providing misdemeanant probation services may experience delays in receiving the fees for this service from their clients due to the allocation of payments by their clients among all of their court-related obligations.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A larger number of parents of juveniles involved in certain delinquency proceedings may be required to pay for costs of prosecution and representation. The Florida Association of Court Clerks' CCIS system will receive $0.05 less in recording fees per page. In calendar year 2005, when set at $0.10, this fee generated $4.27 million.

Private providers of misdemeanant probation services may experience delays in receiving the fees for this service due to the allocation of payments by their clients among all of the individual client's court-related obligations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to continuing implementation of Constitutional Revision 7 to Article V; amending s. 27.52, F.S.; providing for liability for fees, costs, and charges of representation in delinquency proceedings; expanding a provision imposing a lien; amending s. 27.561, F.S.; deleting authorization for a court to reduce or revoke attorney's fees or costs under certain circumstances; requiring defendant-recipients or parents defaulting on payment of attorney's fees or costs to enroll in a payment plan under certain circumstances; amending s. 28.24, F.S.; decreasing a portion of a fee distributed to the Florida Association of Court Clerks and Comptroller, Inc., used to fund court-related technology needs; increasing a portion of a fee used to fund court-related technology needs and court technology needs and redirecting its distribution from the boards of county commissioners to the Court Technology Trust Fund; specifying additional uses of the fee; providing criteria and requirements for use and distribution of funds in the trust fund; amending s. 28.35, F.S.; providing additional duties of the Florida Clerks of Court Operations Corporation; providing requirements for the corporation relating to certain budget amendments; prohibiting a clerk from making certain noncomplying expenditures; amending s. 28.36, F.S.; correcting cross-references; providing expenditure requirements for certain budgets; providing expenditure recording and reporting requirements for clerks; amending

s. 29.008, F.S.; specifying methodology, criteria, and procedures for determining noncompliance of counties in funding court-related functions; providing duties of a chief judge, the board of county commissioners, the Executive Office of the Governor, and the Administration Commission; revising provisions for withholding certain revenue sharing receipts by the Department of Revenue; providing a definition; amending s. 29.0086, F.S.; providing an additional reporting requirement of the Article V Technology Board; providing for future repeal of the Article V Technology Board; creating s. 29.0087, F.S.; establishing in each judicial circuit a Judicial Circuit Article V Technology Advisory Council; providing for membership; providing for terms; providing for serving without compensation; providing for per diem and travel expenses; providing for staff for the councils; providing for meetings; providing purposes and duties; amending s. 44.103, F.S.; providing additional requirements and procedures for court-ordered nonbinding arbitration proceedings; authorizing courts to assess certain costs against parties requesting de novo trials after arbitration; providing cost assessment criteria; providing a definition; amending s. 218.245, F.S.; revising apportionment criteria for revenue sharing distributions for certain local governments; amending s. 318.18, F.S.; revising reporting requirements for infraction or violation surcharge funds used to finance court facilities; amending s. 903.286, F.S.; revising authority

of the clerk of court to withhold funds from return of certain cash bonds for unpaid court fees, court costs, and criminal penalties; providing notice requirements of such withheld funds; amending s. 938.27, F.S.; requiring convicted persons or parents of adjudicated juveniles to enroll in certain prosecution cost-payment plans; deleting certain cost-payment criteria; deleting a requirement for deposit and use of costs collected by the state attorney; amending s. 938.29, F.S.; revising certain provisions for liability for payment of attorney's fees and costs; amending s. 948.15, F.S.; requiring misdemeanor probation service providers to establish a process for collecting certain payments; providing for allocating certain payments among outstanding obligations; renumbering s. 939.185, F.S., as s. 938.195, F.S.; creating s. 938.065, F.S., by transferring and amending s. 775.083(2), F.S.; providing for financing county crime prevention programs from certain court costs; amending ss. 938.17, 938.19, 948.08, 948.16, and 985.306, F.S.; correcting cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 27.52, Florida Statutes, is amended to read:

27.52 Determination of indigent status.--

(6) DUTIES OF PARENT OR LEGAL GUARDIAN.--A nonindigent parent or legal guardian of an applicant who is a minor or an

adult tax-dependent person shall furnish the minor or adult tax-dependent person with the necessary legal services and costs incident to a delinquency proceeding or, upon transfer of such person for criminal prosecution as an adult pursuant to chapter 985, a criminal prosecution in which the person has a right to legal counsel under the Constitution of the United States or the Constitution of the State of Florida. The failure of a parent or legal guardian to furnish legal services and costs under this section does not bar the appointment of legal counsel pursuant to this section, s. 27.40, or s. 27.5303. When the public defender, a private court-appointed conflict counsel, or a private attorney is appointed to represent a minor or an adult tax-dependent person in any proceeding in circuit court or in a criminal or delinquency proceeding in any other court, the parents or the legal guardian shall be liable for payment of the fees, charges, and costs of the representation even if the person is a minor being tried as an adult. Liability for the fees, charges, and costs of the representation shall be imposed in the form of a lien against the property of the ~~nonindigent~~ parents or legal guardian of the minor or adult tax-dependent person. The lien is enforceable as provided in s. 27.561 or s. 938.29.

Section 2. Subsection (3) of section 27.561, Florida Statutes, is amended to read:

27.561 Effect of nonpayment.--

(3) If it appears to the satisfaction of the court that the default in the payment of the attorney's fees or costs is not contempt, the court may enter an order allowing the

defendant-recipient or parent additional time for~~, or reducing the amount of,~~ payment ~~or revoking the assessed attorney's fees or costs, or the unpaid portion thereof, in whole or in part~~. If the court allows additional time for payment, the defendant-recipient or parent shall be enrolled in a payment plan pursuant to s. 28.246(4).

Section 3. Paragraph (e) of subsection (12) of section 28.24, Florida Statutes, is amended to read:

28.24 Service charges by clerk of the circuit court.--The clerk of the circuit court shall charge for services rendered by the clerk's office in recording documents and instruments and in performing the duties enumerated in amounts not to exceed those specified in this section. Notwithstanding any other provision of this section, the clerk of the circuit court shall provide without charge to the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, and court-appointed counsel paid by the state, and to the authorized staff acting on behalf of each, access to and a copy of any public record, if the requesting party is entitled by law to view the exempt or confidential record, as maintained by and in the custody of the clerk of the circuit court as provided in general law and the Florida Rules of Judicial Administration. The clerk of the circuit court may provide the requested public record in an electronic format in lieu of a paper format when capable of being accessed by the requesting entity.

Charges

(12) For recording, indexing, and filing any instrument not more than 14 inches by 81/2 inches, including required notice to property appraiser where applicable:

(e) An additional service charge of $4 per page shall be paid to the clerk of the circuit court for each instrument listed in s. 28.222, except judgments received from the courts and notices of lis pendens, recorded in the official records. From the additional $4 service charge collected:

1. If the counties maintain legal responsibility for the costs of the court-related technology needs as described ~~defined~~ in s. 29.008(1)(f)2. and (h), 5 ~~10~~ cents shall be distributed to the Florida Association of Court Clerks and Comptroller, Inc., for the cost of development, implementation, operation, and maintenance of the clerks' Comprehensive Case Information System, in which system all clerks shall participate on or before January 1, 2006; $1.90 shall be retained by the clerk to be deposited in the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk as described ~~defined~~ in s. 29.008(1)(f)2. and (h); and $2.05 ~~$2~~ shall be distributed to the Court Technology Trust Fund ~~board of county commissioners~~ to be used to prepare the strategic plan required by s. 29.0087 and provide oversight of court-related technology services provided by the counties and to be disbursed to counties as state financial assistance to offset the costs of providing ~~exclusively to fund~~ court-related technology, and court technology needs as described ~~defined~~ in s. 29.008(1)(f)2. and (h) for the state trial courts, state attorney, and public defender in that county. Counties shall

agree to use funds in conformance with the strategic plan required by s. 29.0087 as approved by the chief judge in order to be eligible for state financial assistance from the Court Technology Trust Fund. The amount provided to each county from the Court Technology Trust Fund shall be equal to each county's percentage of total collections of the additional recording fee required by this section applied to the total amount available to be distributed to counties. If a county is not eligible to receive funds from the Court Technology Trust Fund, the funds that would have otherwise been distributed to the county shall remain in the Court Technology Trust Fund to be used as appropriated by the Legislature. If the counties maintain legal responsibility for the costs of the court-related technology needs as described ~~defined~~ in s. 29.008(1)(f)2. and (h), notwithstanding any other provision of law, the county is not required to provide additional funding beyond that provided herein for the court-related technology needs of the clerk as described ~~defined~~ in s. 29.008(1)(f)2. and (h). All court records and official records are the property of the State of Florida, including any records generated as part of the Comprehensive Case Information System funded pursuant to this paragraph and the clerk of court is designated as the custodian of such records, except in a county where the duty of maintaining official records exists in a county office other than the clerk of court or comptroller, such county office is designated the custodian of all official records, and the clerk of court is designated the custodian of all court records. The clerk of court or any entity acting on behalf of the clerk of

court, including an association, shall not charge a fee to any agency as defined in s. 119.011, the Legislature, or the State Court System for copies of records generated by the Comprehensive Case Information System or held by the clerk of court or any entity acting on behalf of the clerk of court, including an association.

2. If the state becomes legally responsible for the costs of court-related technology needs as described ~~defined~~ in s. 29.008(1)(f)2. and (h), whether by operation of general law or by court order, $4 shall be remitted to the Department of Revenue for deposit into the General Revenue Fund.

Section 4. Paragraphs (h) and (i) are added to subsection (2) of section 28.35, Florida Statutes, paragraph (e) of that subsection is amended, subsections (4) through (7) of that section are renumbered as subsections (5) through (8), respectively, and a new subsection (4) is added to that section, to read:

28.35 Florida Clerks of Court Operations Corporation.--

(2) The duties of the corporation shall include the following:

(e) Developing and certifying a uniform system of performance measures and applicable performance standards for the functions specified in paragraph (5) ~~(4)~~ (a) and clerk performance in meeting the performance standards. These measures and standards shall be designed to facilitate an objective determination of the performance of each clerk in accordance with minimum standards for fiscal management, operational efficiency, and effective collection of fines, fees, service

charges, and court costs. When the corporation finds a clerk has not met the performance standards, the corporation shall identify the nature of each deficiency and any corrective action recommended and taken by the affected clerk of the court.

(h) Receiving reports from each clerk of court in a format specified by the corporation that allows reconciliation of the expenses of a clerk to the clerk's certified budget.

(i) Providing information regarding the budgets and expenditures of clerks and any other fiscal data related to the corporation and performance of court-related clerk duties upon request by a committee of the Legislature, the Governor, or the Office of the State Courts Administrator. Clerks of court shall provide any information requested by the corporation in accordance with this paragraph.

(4) Approval of the corporation is required for a certified budget to be amended except as otherwise provided in s. 28.36(6). The corporation shall provide notice to the appropriations committees of the Senate and the House of Representatives of any requested amendment to a certified budget and the resulting action taken by the corporation to approve or disapprove such request. A clerk may not make expenditures that do not comply with the clerk's certified budget.

Section 5. Subsections (1) through (5) of section 28.36, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

28.36 Budget procedure.--There is hereby established a budget procedure for the court-related functions of the clerks of the court.

(1) Only those functions on the standard list developed pursuant to s. 28.35(5) ~~(4)~~(a) may be funded from fees, service charges, court costs, and fines retained by the clerks of the court. No clerk may use fees, service charges, court costs, and fines in excess of the maximum budget amounts as established in subsection (5).

(2) For the period July 1, 2004, through September 30, 2004, and for each county fiscal year ending September 30 thereafter, each clerk of the court shall prepare a budget relating solely to the performance of the standard list of court-related functions pursuant to s. 28.35(5) ~~(4)~~(a).

(3) Each proposed budget shall further conform to the following requirements:

(a) On or before August 15 for each fiscal year thereafter, the proposed budget shall be prepared, summarized, and submitted by the clerk in each county to the Clerks of Court Operations Corporation in the manner and form prescribed by the corporation. The proposed budget must provide detailed information on the anticipated revenues available and expenditures necessary for the performance of the standard list of court-related functions of the clerk's office developed pursuant to s. 28.35(5) ~~(4)~~(a) for the county fiscal year beginning the following October 1.

(b) The proposed budget must be balanced~~,~~ such that the total of the estimated revenues available equals ~~must equal~~ or exceeds ~~exceed~~ the total of the anticipated expenditures. These revenues include the following: cash balances brought forward from the prior fiscal period; revenue projected to be received

from fees, service charges, court costs, and fines for court-related functions during the fiscal period covered by the budget; and supplemental revenue that may be requested pursuant to subsection (4). Both proposed and certified budgets shall list expenditures by appropriations categories as defined in s. 216.011 and the number of full-time equivalent positions. A budget shall specifically list any nonrecurring expenditures, including, but not limited to, employee bonuses and equipment purchases. The budget shall also specify details of any general changes to salaries and benefits, such as cost-of-living increases in salaries and improvements in benefits. ~~The anticipated expenditures must be itemized as required by the corporation, pursuant to contract with the Chief Financial Officer.~~

(c) The proposed budget may include a contingency reserve not to exceed 10 percent of the total budget, provided that, overall, the proposed budget does not exceed the limits prescribed in subsection (5).

(4) If a clerk of the court estimates that available funds plus projected revenues from fines, fees, service charges, and costs for court-related services are insufficient to meet the anticipated expenditures for the standard list of court-related functions in s. 28.35(5) ~~(4)~~ (a) performed by his or her office, the clerk must report the revenue deficit to the Clerks of Court Operations Corporation in the manner and form prescribed by the corporation pursuant to contract with the Chief Financial Officer. The corporation shall verify that the proposed budget

is limited to the standard list of court-related functions in s. 28.35(5)~~(4)~~(a).

(a) If the corporation verifies that the proposed budget is limited to the standard list of court-related functions in s. 28.35(5)~~(4)~~(a) and a revenue deficit is projected, a clerk seeking to retain revenues pursuant to this subsection shall increase all fees, service charges, and any other court-related clerk fees and charges to the maximum amounts specified by law or the amount necessary to resolve the deficit, whichever is less. If, after increasing fees, service charges, and any other court-related clerk fees and charges to the maximum amounts specified by law, a revenue deficit is still projected, the corporation shall, pursuant to the terms of the contract with the Chief Financial Officer, certify a revenue deficit and notify the Department of Revenue that the clerk is authorized to retain revenues, in an amount necessary to fully fund the projected revenue deficit, which he or she would otherwise be required to remit to the Department of Revenue for deposit into the Department of Revenue Clerks of the Court Trust Fund pursuant to s. 28.37. If a revenue deficit is projected for that clerk after retaining all of the projected collections from the court-related fines, fees, service charges, and costs, the Department of Revenue shall certify the amount of the revenue deficit amount to the Executive Office of the Governor and request release authority for funds appropriated for this purpose from the Department of Revenue Clerks of the Court Trust Fund. Notwithstanding provisions of s. 216.192 related to the release of funds, the Executive Office of the Governor may

approve the release of funds appropriated to resolve projected revenue deficits in accordance with the notice, review, and objection procedures set forth in s. 216.177 and shall provide notice to the Chief Financial Officer. The Department of Revenue is directed to request monthly distributions from the Chief Financial Officer in equal amounts to each clerk certified to have a revenue deficit, in accordance with the releases approved by the Governor.

(b) If the Chief Financial Officer finds the court-related budget proposed by a clerk includes functions not included in the standard list of court-related functions in s. 28.35(5) ~~(4)~~ (a), the Chief Financial Officer shall notify the clerk of the amount of the proposed budget not eligible to be funded from fees, service charges, costs, and fines for court-related functions and shall identify appropriate corrective measures to ensure budget integrity. The clerk shall then immediately discontinue all ineligible expenditures of court-related funds for this purpose and reimburse the Clerks of the Court Trust Fund for any previously ineligible expenditures made for non-court-related functions, and shall implement any corrective actions identified by the Chief Financial Officer.

(5)(a) For the county fiscal year October 1, 2004, through September 30, 2005, the maximum annual budget amount for the standard list of court-related functions of the clerks of court in s. 28.35(5) ~~(4)~~ (a) that may be funded from fees, service charges, court costs, and fines retained by the clerks of the court shall not exceed:

1. One hundred and three percent of the clerk's estimated expenditures for the prior county fiscal year; or

2. One hundred and five percent of the clerk's estimated expenditures for the prior county fiscal year for those clerks in counties that for calendar years 1998-2002 experienced an average annual increase of at least 5 percent in both population and case filings for all case types as reported through the Summary Reporting System used by the state courts system.

(b) For the county fiscal year 2005-2006, the maximum budget amount for the standard list of court-related functions of the clerks of court in s. 28.35(5) ~~(4)~~(a) that may be funded from fees, service charges, court costs, and fines retained by the clerks of the court shall be the approved budget for county fiscal year 2004-2005 adjusted by the projected percentage change in revenue between the county fiscal years 2004-2005 and 2005-2006.

(c) For the county fiscal years 2006-2007 and thereafter, the maximum budget amount for the standard list of court-related functions of the clerks of court in s. 28.35(5) ~~(4)~~(a) that may be funded from fees, service charges, court costs, and fines retained by the clerks of the court shall be established by first rebasing the prior fiscal year budget to reflect the actual percentage change in the prior fiscal year revenue and then adjusting the rebased prior fiscal year budget by the projected percentage change in revenue for the proposed budget year. The rebasing calculations and maximum annual budget calculations shall be as follows:

1. For county fiscal year 2006-2007, the approved budget for county fiscal year 2004-2005 shall be adjusted for the actual percentage change in revenue between the two 12-month periods ending June 30, 2005, and June 30, 2006. This result is the rebased budget for the county fiscal year 2005-2006. Then the rebased budget for the county fiscal year 2005-2006 shall be adjusted by the projected percentage change in revenue between the county fiscal years 2005-2006 and 2006-2007. This result shall be the maximum annual budget amount for the standard list of court-related functions of the clerks of court in s. 28.35(5) ~~(4)~~ (a) that may be funded from fees, service charges, court costs, and fines retained by the clerks of the court for each clerk for the county fiscal year 2006-2007.

2. For county fiscal year 2007-2008, the rebased budget for county fiscal year 2005-2006 shall be adjusted for the actual percentage change in revenue between the two 12-month periods ending June 30, 2006, and June 30, 2007. This result is the rebased budget for the county fiscal year 2006-2007. The rebased budget for county fiscal year 2006-2007 shall be adjusted by the projected percentage change in revenue between the county fiscal years 2006-2007 and 2007-2008. This result shall be the maximum annual budget amount for the standard list of court-related functions of the clerks of court in s. 28.35(5) ~~(4)~~ (a) that may be funded from fees, service charges, court costs, and fines retained by the clerks of the court for county fiscal year 2007-2008.

3. For county fiscal years 2008-2009 and thereafter, the maximum budget amount for the standard list of court-related

functions of the clerks of court in s. 28.35(5) ~~(4)~~ (a) that may be funded from fees, service charges, court costs, and fines retained by the clerks of the court shall be calculated as the rebased budget for the prior county fiscal year adjusted by the projected percentage change in revenues between the prior county fiscal year and the county fiscal year for which the maximum budget amount is being authorized. The rebased budget for the prior county fiscal year shall always be calculated by adjusting the rebased budget for the year preceding the prior county fiscal year by the actual percentage change in revenues between the 12-month period ending June 30 of the year preceding the prior county fiscal year and the 12-month period ending June 30 of the prior county fiscal year.

(8) Each clerk shall record and report actual expenditures in a format specified by the Clerks of Court Operations Corporation that allows reconciliation to the clerk's budget as certified by the corporation. The clerk shall submit reports of such expenditures to the corporation upon request but at least quarterly.

Section 6. Subsection (4) of section 29.008, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

29.008 County funding of court-related functions.--

(4)(a) A county may be determined not to be in compliance with its responsibility to fund court-related functions if:

1. The amount budgeted by the county in the upcoming or current county fiscal year for any item specified in paragraphs (1)(a), (c), (d), (e), (f), (g), and (h) and subsection (3) is

less than the amount spent for that item in county fiscal year 2002-2003, the base year, plus 1.5 percent growth per year; and

2. The chief judge asserts that deficiencies will exist in the functioning of the circuit court due to the lack of sufficient budget for that item which the county is funding at less than the base year plus 1.5 percent growth per year.

(b) The process for determining whether a county is not in compliance with its funding responsibility shall be as follows:

1. The chief judge shall identify in writing the specific deficiencies the chief judge asserts will be experienced by the circuit court associated with the county's lack of sufficient support for that item, the recommended corrections, and an estimate of the funding required for such corrections and shall furnish this statement to the board of county commissioners.

2. The board shall provide a response in writing to the chief judge. If the board chooses not to amend its budget to provide funding sufficient to equal the funding for the item in the base year plus 1.5 percent growth per year or remedy the specific deficiencies identified by the chief judge, whichever is less, within 30 days after receiving written notice of such action by the board, the chief judge may notify the Administration Commission of the alleged deficiency and explain the expected impact on the ability of the court to perform the court's constitutional and statutory functions. The notice shall set forth, in the form and manner prescribed by the Executive Office of the Governor and approved by the Administration Commission, the specific deficiencies, recommended corrections, estimate of the funding required for such corrections,

expenditures made by the county in the base year for the items, and budget for the items for the county fiscal year in question. The notice shall be provided to the Executive Office of the Governor and the board. The board shall have 5 days from receipt of the notice to provide to the Executive Office of the Governor a reply to the notice, and the board shall provide a copy of such reply to the chief judge.

3. Upon receipt of the notice, the Executive Office of the Governor shall provide for a budget hearing at which the matters presented in the notice and the reply shall be considered. A report of the findings and recommendations of the Executive Office of the Governor on such matters shall be promptly submitted to the Administration Commission, which, within 30 days, shall approve the action of the board as to each separate item or direct the Department of Revenue to withhold revenue sharing funds as provided in paragraph (c) in an amount determined by the Administration Commission to be sufficient to remedy the deficiency; however, in no case shall the amount withheld result in a budget that exceeds the amount spent for the item in the base year plus 1.5 percent growth per year for any item enumerated in subparagraph (a)1. The determination of the Administration Commission shall be final and shall be provided to the chief judge, the board, and the Department of Revenue.

(c)1. If the Administration Commission determines that the board shall provide additional funding to fulfill its responsibilities under this section ~~Except for revenues used for the payment of principal or interest on bonds, tax anticipation~~

~~certificates, or any other form of indebtedness as allowed under s. 218.25(1),(2) or (4)~~, the Department of Revenue shall withhold revenue sharing receipts distributed pursuant to part II of chapter 218, except for revenues used for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness as allowed under s. 218.25(1), (2), or (4), from that ~~any~~ county determined to be not in compliance as provided in this subsection ~~with the county funding obligations for items specified in paragraphs (1)(a), (c), (d), (e), (f), (g), and (h) and subsection (3). The department shall withhold an amount equal to the difference between the amount spent by the county for the particular item in county fiscal year 2002-2003, the base year, plus 3 percent, and the amount budgeted by the county for these obligations in county fiscal year 2004-2005, if the latter is less than the former. Every year thereafter, the department shall withhold such an amount if the amount budgeted in that year is less than the base year plus 1.5 percent growth per year. On or before December 31, 2004, counties shall send to the department a certified copy of their budget documents for the respective 2 years, separately identifying expenditure amounts for each county funding obligation specified in paragraphs (1) (a), (c), (d), (e), (f), (g), and (h) and subsection (3). Each year thereafter, on or before December 31 of that year, each county shall send a certified copy of its budget document to the department~~.

~~(b) Beginning in fiscal year 2005-2006, additional amounts shall be withheld pursuant to paragraph (a), if the amount spent~~

~~in the previous fiscal year on the items specified in paragraphs (1)(a), (c), (d), (e), (f), (g), and (h), and subsection (3) is less than the amount budgeted for those items. Each county shall certify expenditures for these county obligations for the prior fiscal year to the department within 90 days after the end of the fiscal year.~~

2.~~(c)~~ The department shall transfer the withheld payments to the General Revenue Fund by March 31 of each year. These payments are hereby appropriated to the Department of Revenue to pay for these responsibilities on behalf of the county.

(5) For purposes of this section, the term "salaries" includes associated fringe benefits or other perquisites that are typically provided by the county to its employees.

Section 7. Paragraph (d) is added to subsection (5) of section 29.0086, Florida Statutes, and subsection (9) of that section is amended, to read:

29.0086 Article V Technology Board.--

(5) The board shall:

(d) By December 15, 2006, provide a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court. The report shall contain:

1. Recommended statutory language that would provide policy guidance for the strategic plans to be developed and the data integration to be promoted by the Judicial Circuit Article V Technology Advisory Councils.

2. Recommended policies to be adopted by the Office of the State Courts Administrator within the framework provided by the

recommended statutory language provided under subparagraph 1. regarding circuit information technology.

3. A description of any further progress made on efforts to develop a catalog of common data elements.

(9) This section is repealed effective January 1, 2007 ~~July 1, 2006~~.

Section 8. Section 29.0087, Florida Statutes, is created to read:

29.0087 Judicial Circuit Article V Technology Advisory Councils.--

(1) There shall be established in each judicial circuit a Judicial Circuit Article V Technology Advisory Council.

(a) The membership of the council shall include:

1. The chief judge of the circuit court, or his or her designee, who shall serve as chair.

2. The state attorney of the circuit or his or her designee.

3. The public defender of the circuit or his or her designee.

4. A sheriff from a county in the circuit selected by the chief judge, or the sheriff's designee, who shall be appointed to an initial term of 1 year and shall serve 2-year terms thereafter.

5. A clerk from a county in the circuit selected by the chief judge, or the clerk's designee, who shall be appointed to an initial term of 1 year and shall serve 2-year terms thereafter.

6. A member of a board of county commissioners from a county in the circuit selected by the chief judge, or the member's designee, who shall be appointed to an initial term of 2 years and shall serve 2-year terms thereafter.

7. A member in good standing of The Florida Bar practicing in the circuit, appointed by the chief judge.

(b)1. There shall be no limit to the number of terms a member may serve. For multicounty circuits, to the extent possible, the members provided in subparagraphs (a)4.-6. shall be from different counties.

2. Members of the advisory council shall serve without compensation but are entitled to per diem and reimbursement for travel expenses in accordance with s. 112.061. Such per diem and reimbursement for travel expenses shall be paid by the entity employing the member, except for the member of The Florida Bar, whose per diem and reimbursement for travel expenses shall be paid by the judicial circuit.

(c) The judicial circuit information technology director and such other judicial circuit employees as are necessary shall serve as staff to the advisory council. Employees of the entities represented by the members of the advisory council may also provide staff support to the advisory council at the request of the judicial circuit information technology director.

(d) The first meeting of the advisory council shall be held no later than September 30, 2006. The advisory council shall meet at the call of the chair but no less frequently than quarterly.

(2) The advisory council shall work to promote the efficiency and effectiveness of the justice system in the circuit and the state as well as to ensure the security of data.

(3) The duties of the advisory council shall include:

(a) Developing an initial strategic plan and subsequent updated strategic plans to address court-related technology and court technology needs as described in s. 29.008(1)(f)2. and (h). Such plans shall comply with any policies adopted by the Office of the State Courts Administrator regarding circuit-level information technology services. The initial strategic plan or subsequent updated strategic plans shall be provided to the chief judge no later than March 31 of each year.

(b) Promoting secure and reliable data integration, interoperability, and access among the information systems under the control of the chief judge, state attorney, and public defender; the clerks of court, sheriffs, and counties of the circuit; and the various state agencies involved in the justice system and the other court systems of the state.

Section 9. Subsections (4) and (6) of section 44.103, Florida Statutes, are amended to read:

44.103 Court-ordered, nonbinding arbitration.--

(4) An arbitrator or, in the case of a panel, the chief arbitrator~~,~~ shall have such power to administer oaths or affirmation and to conduct the proceedings as the rules of court shall provide. The proceedings shall be conducted informally. Presentation of testimony and evidence shall be kept to a minimum and matters shall be presented to the arbitrators primarily through the statements and arguments of counsel. ~~At~~

~~the request of~~ Any party to the arbitration may petition the court in the underlying action, for good cause shown, to authorize the~~, such~~ arbitrator to ~~shall~~ issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition ~~apply to~~ the court for orders compelling such attendance and production at the arbitration. Subpoenas shall be served and shall be enforceable in the manner provided by law.

(6) Upon motion made by either party within 30 days after entry of a judgment, the court may assess costs against the party requesting a trial de novo, including arbitration costs, court costs, reasonable attorney's fees, and other reasonable costs, such as investigation expenses and expenses for expert or other testimony that were incurred after the arbitration hearing and continuing through the trial of the case, in accordance with the guidelines for taxation of costs as adopted by the Supreme Court. Such costs may be assessed if:

(a) The plaintiff, having filed for a trial de novo, obtains a judgment at trial that is at least 25 percent less than the arbitration award. In such an instance, the costs and attorney's fees assessed pursuant to this subsection shall be set off against the award. When the costs and attorney's fees assessed pursuant to this subsection total more than the amount of the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and attorney's fees, less the amount of the award to the plaintiff. For purposes of a determination under this paragraph, the term "judgment" means the amount of the net judgment entered plus all

taxable costs pursuant to the guidelines for taxation of costs as adopted by the Supreme Court, any postarbitration collateral source payments received or due as of the date of the judgment, and any postarbitration settlement amounts by which the verdict was reduced; or

(b) The defendant, having filed for a trial de novo, has a judgment entered against the defendant that is a least 25 percent more than the arbitration award. For purposes of a determination under this paragraph, the term "judgment" means the amount of the net judgment entered plus any postarbitration settlement amounts by which the verdict was reduced. ~~The party having filed for a trial de novo may be assessed the arbitration costs, court costs, and other reasonable costs of the party, including attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing if the judgment upon the trial de novo is not more favorable than the arbitration decision.~~

Section 10. Subsection (3) of section 218.245, Florida Statutes, as amended by section 44 of chapter 2005-236, Laws of Florida, is amended to read:

218.245 Revenue sharing; apportionment.--

(3) Revenues attributed to the increase in distribution to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 212.20(6)(d)6. from 1.0715 percent to 1.3409 percent provided in chapter 2003-402, Laws of Florida, shall be distributed to each eligible municipality and any unit of local government which is consolidated as provided by s. 9, Art. VIII of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII, 1968

revised constitution, as follows: each eligible local government's allocation shall be based on the amount it received from the half-cent sales tax under s. 218.61 in the prior state fiscal year divided by the total receipts under s. 218.61 in the prior state fiscal year for all eligible local governments; provided, however, for the purpose of calculating this distribution, the amount received from the half-cent sales tax under s. 218.61 in the prior state fiscal year by a unit of local government which is consolidated as provided by s. 9, Art. VIII of the State Constitution of 1885, as amended, and as preserved by s. 6(e), Art. VIII, of the Constitution as revised in 1968, shall be reduced by 42 ~~50~~ percent for such local government and for the total receipts. For eligible municipalities that began participating in the allocation of half-cent sales tax under s. 218.61 in the previous state fiscal year, their annual receipts shall be calculated by dividing their actual receipts by the number of months they participated, and the result multiplied by 12.

Section 11. Subsection (13) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of civil penalties.--The penalties required for a noncriminal disposition pursuant to s. 318.14 are as follows:

(13) In addition to any penalties imposed for noncriminal traffic infractions pursuant to this chapter or imposed for criminal violations listed in s. 318.17, a board of county commissioners or any unit of local government which is consolidated as provided by s. 9, Art. VIII of the State

Constitution of 1885, as preserved by s. 6(e), Art. VIII of the Constitution of 1968:

(a) May impose by ordinance a surcharge of up to $15 for any infraction or violation to fund state court facilities. The court shall not waive this surcharge. Up to 25 percent of the revenue from such surcharge may be used to support local law libraries provided that the county or unit of local government provides a level of service equal to that provided prior to July 1, 2004, which shall include the continuation of library facilities located in or near the county courthouse or annexes.

(b) That imposed increased fees or service charges by ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the purpose of securing payment of the principal and interest on bonds issued by the county before July 1, 2003, to finance state court facilities, may impose by ordinance a surcharge for any infraction or violation for the exclusive purpose of securing payment of the principal and interest on bonds issued by the county before July 1, 2003, to fund state court facilities until the date of stated maturity. The court shall not waive this surcharge. Such surcharge may not exceed an amount per violation calculated as the quotient of the maximum annual payment of the principal and interest on the bonds as of July 1, 2003, divided by the number of traffic citations for county fiscal year 2002-2003 certified as paid by the clerk of the court of the county. Such quotient shall be rounded up to the next highest dollar amount. The bonds may be refunded only if savings will be realized on payments of debt service and the refunding bonds are

scheduled to mature on the same date or before the bonds being refunded.

A county may not impose both of the surcharges authorized under paragraphs (a) and (b) concurrently. The county ~~clerk of court~~ shall report, no later than 30 days after the end of the quarter, the amount of funds collected, the amount of funds expended, and the uses of the funds under this subsection during each quarter of the fiscal year. The county ~~clerk~~ shall submit the report, in a format developed by the Office of State Courts Administrator, to the chief judge of the circuit, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 12. Section 903.286, Florida Statutes, is amended to read:

903.286 Return of cash bond; requirement to withhold unpaid fines, fees, and court costs.--Notwithstanding the provisions of s. 903.31(2), the clerk of the court shall withhold from the return of a cash bond posted after June 30, 2005, on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid court fees, court costs, and criminal penalties. The clerk of the court shall provide notice of such withholding of funds and an itemized listing of the specific amounts subject to such withholding to such persons prior to the posting of the cash bond. In the event that sufficient funds are not available to pay all unpaid court fees, court costs, and criminal penalties, the clerk of the court shall immediately

obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

Section 13. Subsections (1), (2), and (8) of section 938.27, Florida Statutes, are amended to read:

938.27 Judgment for costs on conviction.--

(1) In all criminal cases, convicted persons or parents of adjudicated juveniles are liable for payment of the documented costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission~~, if requested by such agencies~~. These costs shall be included and entered in the judgment rendered against the convicted person or adjudicated juvenile.

(2)(a) If the court allows additional time for payment of such costs, the convicted person or the parents of the adjudicated juvenile shall be enrolled in a payment plan pursuant to s. 28.246(4) ~~The court shall require the defendant to pay the costs within a specified period or in specified installments~~.

~~(b) The end of such period or the last such installment shall not be later than:~~

~~1. The end of the period of probation or community control, if probation or community control is ordered;~~

~~2. Five years after the end of the term of imprisonment imposed, if the court does not order probation or community control; or~~

~~3. Five years after the date of sentencing in any other case.~~

~~However, in no event shall the obligation to pay any unpaid amounts expire if not paid in full within the period specified in this paragraph.~~

(b) ~~(c)~~ If not otherwise provided by the court under this section, costs shall be paid immediately.

~~(8) Costs that are collected by the state attorney under this section shall be deposited into the state attorney's grants and donations trust fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal cases, which may include the salaries of permanent employees.~~

Section 14. Paragraph (a) of subsection (1) of section 938.29, Florida Statutes, is amended to read:

938.29 Legal assistance; lien for payment of attorney's fees or costs.--

(1)(a) A defendant determined to be guilty of a criminal act or found to have committed a delinquent act by a court or jury or through a plea of guilty or nolo contendere, regardless of adjudication, and who has received the assistance of the public defender's office~~, a special assistant public defender,~~ or a court-appointed ~~conflict~~ attorney shall be liable for payment of attorney's fees and costs. The court shall determine the amount of the obligation. Such costs shall include, but not be limited to, the cost of depositions; cost of transcripts of

depositions, including the cost of defendant's copy, which transcripts are certified by the defendant's attorney as having served a useful purpose in the disposition of the case; investigative costs; witness fees; the cost of psychiatric examinations; or other reasonable costs specially incurred by the state and the clerk of court for the defense of the defendant in criminal prosecutions. Costs shall not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Any costs assessed pursuant to this paragraph shall be reduced by any amount assessed against a defendant pursuant to s. 938.05.

Section 15. Subsections (4) and (5) of section 948.15, Florida Statutes, are renumbered as subsections (5) and (6), respectively, present subsection (3) is renumbered as subsection (4), paragraph (e) of that subsection is amended, and a new subsection (3) is added to that section, to read:

948.15 Misdemeanor probation services.--

(3) The entity providing probation services for offenders sentenced by the county court shall establish a process to collect payments for all offender fees, fines, and costs imposed by the court, restitution owed by the misdemeanor probationer, and the cost of supervision. If a payment made by the misdemeanor probationer is not sufficient to cover the total installment required under a payment plan imposed by the court plus any additional payments that are outstanding, the payment made by the misdemeanor probationer shall be allocated

proportionally among any fees, fines, and costs imposed by the court, restitution owed by the misdemeanor probationer, and the cost of supervision based upon the percentage that the sum owed for each type of payment comprises of the total owed for all types of payments. The entity providing probation services shall provide any funds collected in accordance with this subsection, within 30 days after collection, to the payee to whom the funds are owed.

(4) ~~(3)~~ Any private entity providing services for the supervision of misdemeanor probationers must contract with the county in which the services are to be rendered. In a county with a population of less than 70,000, the county court judge, or the administrative judge of the county court in a county that has more than one county court judge, must approve the contract. Terms of the contract must state, but are not limited to:

(e) Procedures for handling the collection in accordance with subsection (3) of all payments owed by an offender ~~fees and restitution~~.

In addition, the entity shall supply the chief judge's office with a quarterly report summarizing the number of offenders supervised by the private entity, payment of the required contribution under supervision or rehabilitation, and the number of offenders for whom supervision or rehabilitation will be terminated. All records of the entity must be open to inspection upon the request of the county, the court, the Auditor General, the Office of Program Policy Analysis and Government Accountability, or agents thereof.

Section 16. Section 939.185, Florida Statutes, is renumbered as section 938.195, Florida Statutes.

Section 17. Subsection (3) of section 775.083, Florida Statutes, is renumbered as subsection (2) of that section, and present subsection (2) of that section is transferred to section 938.065, Florida Statutes, which is created, and amended to read:

938.065 County crime prevention programs.--

~~(2) In addition to the fines set forth in subsection (1),~~ Court costs shall be assessed and collected in each instance a defendant pleads nolo contendere to, or is convicted of, or adjudicated delinquent for, a felony, a misdemeanor, or a criminal traffic offense under state law, or a violation of any municipal or county ordinance if the violation constitutes a misdemeanor under state law. The court costs imposed by this section shall be $50 for a felony and $20 for any other offense and shall be deposited by the clerk of the court into an appropriate county account for disbursement for the purposes provided in this subsection. A county shall account for the funds separately from other county funds as crime prevention funds. The county, in consultation with the sheriff, must expend such funds for crime prevention programs in the county, including safe neighborhood programs under ss. 163.501-163.523.

Section 18. Subsections (1), (2), and (4) of section 938.17, Florida Statutes, are amended to read:

938.17 County delinquency prevention; juvenile assessment centers and school board suspension programs.--

(1) Prior to the use of costs received pursuant to s. 938.195 ~~939.185~~, the sheriff's office of the county must be a partner in a written agreement with the Department of Juvenile Justice to participate in a juvenile assessment center or with the district school board to participate in a suspension program.

(2) Assessments collected by clerks of the circuit courts comprised of more than one county shall remit the funds collected pursuant to s. 938.195 ~~939.185~~ to the county in which the offense at issue was committed for deposit and disbursement.

(4) A sheriff's office that receives proceeds pursuant to s. 938.195 ~~939.185~~ shall account for all funds annually by August 1 in a written report to the juvenile justice county council if funds are used for assessment centers, and to the district school board if funds are used for suspension programs.

Section 19. Subsection (7) of section 938.19, Florida Statutes, is amended to read:

938.19 Teen courts.--

(7) A teen court administered in a county that adopts an ordinance to assess court costs under this section may not receive court costs collected under s. 938.195(1)(a)4. ~~939.185(1)(a)4.~~

Section 20. Paragraph (d) of subsection (6) of section 948.08, Florida Statutes, is amended to read:

948.08 Pretrial intervention program.--

(6)

(d) Any entity, whether public or private, providing a pretrial substance abuse education and treatment intervention

program under this subsection must contract with the county or appropriate governmental entity, and the terms of the contract must include, but need not be limited to, the requirements established for private entities under s. 948.15(4) ~~(3)~~.

Section 21. Subsection (3) of section 948.16, Florida Statutes, is amended to read:

948.16 Misdemeanor pretrial substance abuse education and treatment intervention program.--

(3) Any public or private entity providing a pretrial substance abuse education and treatment program under this section shall contract with the county or appropriate governmental entity. The terms of the contract shall include, but not be limited to, the requirements established for private entities under s. 948.15(4) ~~(3)~~.

Section 22. Paragraph (d) of subsection (1) of section 985.306, Florida Statutes, is amended to read:

985.306 Delinquency pretrial intervention program.--

(1)

(d) Any entity, whether public or private, providing pretrial substance abuse education, treatment intervention, and a urine monitoring program under this section must contract with the county or appropriate governmental entity, and the terms of the contract must include, but need not be limited to, the requirements established for private entities under s. 948.15(4) ~~(3)~~. It is the intent of the Legislature that public or private entities providing substance abuse education and treatment intervention programs involve the active participation

of parents, schools, churches, businesses, law enforcement agencies, and the department or its contract providers.

Section 23. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1219 City of Tampa, Hillsborough County
SPONSOR(S): Joyner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2760

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	DiVagno	Hamby
2) Governmental Operations Committee	5 Y, 0 N	Mitchell	Williamson
3) Fiscal Council		Dobbs	Kelly
4)			
5)			

SUMMARY ANALYSIS

All general employees of the City of Tampa employed on or after October 1, 1981 are Division B employees under the General Employees' Pension Plan created by the Legislature. This General Employees' Pension Plan provides for longevity retirement benefits: after at least six years of service and attaining the age of 62, a Division B employee is entitled to a monthly pension benefit equal to 1.15 percent of their average monthly salary multiplied by years of service.

The bill increases the benefit percentage for Division B employees by 0.05 percent, from 1.15 percent to 1.20 percent.

The bill will have a fiscal impact of approximately $900,000 on the City of Tampa in Fiscal Year 2006-2007. The bill has no impact on state expenditures.

The bill provides an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government – This bill increases retirement benefits for certain employees of the City of Tampa.

B. EFFECT OF PROPOSED CHANGES:

City of Tampa Pension System

In 1945, the Legislature created a pension fund for all permanent employees of the City of Tampa, Florida.[1] In 1981, the Legislature created two divisions within this pension system:

- Division A includes all those members who were employed prior to October 1, 1981 and who did not elect to join Division B.
- Division B includes all general employees employed on or after October 1, 1981, and all Division A employees who elected to join Division B.[2]

In creating these divisions, the Legislature also created different longevity retirement benefits for Division B employees: a monthly pension benefit equal to 1.1 percent of their average monthly salary multiplied by their service for those Division B employees who retired on or after their normal retirement date.[3] In 2005, the Legislature amended the longevity retirement benefits for Division B employees to increase the "multiplier" percentage to 1.15.[4] Now, after at least six years of service and attaining the age of 62, a Division B employee is entitled to a monthly pension benefit equal to 1.15 percent of their average monthly salary multiplied by years of service. The average monthly salary is the total compensation received during the three years out of the last six years of continuous service which produces the highest average, divided by 36.[5]

Requirements for Increasing the Longevity Retirement Benefits

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.

Part VII of chapter 112, Florida Statutes, the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of article X, section 14 of the Florida Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. This part is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

Section 112.63, Florida Statutes, provides that no unit of local government shall agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a

[1] Ch. 23559, Laws of Fla. (1945).
[2] Ch. 81-497, Laws of Fla., §§ 1 and 3.
[3] *Id*, § 8.
[4] Ch. 2005-326, Laws of Fla., §2.
[5] General Employees' Pension Plan for the City of Tampa, Actuarial Impact Statement as of January 1, 2005.

statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and has furnished a copy of such statement to the Division of Retirement, Department of Management Services. The statement also is required to indicate whether the proposed changes are in compliance with article X, section 14 of the Florida Constitution, and with section 112.64, Florida Statutes, which relates to administration of funds and amortization of unfunded liability. It appears the requirements of this section were satisfied.

Increasing the Longevity Retirement Benefits

This bill increases the multiplier of Division B employees by 0.05 percent, raising it from 1.15 percent to 1.20 percent. This bill would entitle an eligible Division B employee to a monthly pension plan equal to 1.20 percent of his or her average monthly salary multiplied by his or her years of service.

C. SECTION DIRECTORY:

Section 1: Amends section 8 of chapter 23559, Laws of Florida, as amended by chapter 2005-326, Laws of Florida, to increase the longevity retirement benefits multiplier.

Section 2: Provides an effective date of October 1, 2006.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? *January 12, 2006.*

WHERE? *Tampa Tribune, Tampa, Hillsborough County, Florida.*

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

According to the Economic Impact Statement, no fiscal impact is expected for Fiscal Year 2005-2006. A fiscal impact of $900,000 is expected for Fiscal Year 2006-2007.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Article X, Section 14

Benefit increases to public retirement or pension systems may not be made unless funding is concurrently provided for the increase. The City of Tampa ratified this increase on November 17, 2005.[6] In addition, according to the Department of Management Services, this bill complies with the requirements of section 14 of article X of the Florida Constitution and part VII of chapter 112, Florida Statutes.[7]

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[6] *See, e.g.,* Transcription, Tampa City Council Meeting, Nov. 17, 2005, 9:00 a.m., available at http://www.tampagov.net/appl_Cable_Communications_closed_captioning/frmAgenda.asp?pkey=1139&txtValidPage=1&txtPrevPage=index.asp&txtNextPage=frmAgenda.asp (last visited Mar. 24, 2006).

[7] Fla. Dep't of Mgmt. Serv., HB 1219 (2006) Staff Analysis (Mar. 21, 2006) (on file with dep't).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to the City of Tampa, Hillsborough County; amending s. 8, chapter 23559, Laws of Florida, 1945, as amended; revising longevity retirement provisions to provide for a multiplier of 1.20 percent for employees in Division B, as amended; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 8 of chapter 23559, Laws of Florida, 1945, as amended by chapter 2005-326, Laws of Florida, is amended to read:

Section 8. Longevity Retirement Benefits.

(A) Division A Employees: An Employee in Division A whose employment terminates on or after his or her Normal Retirement Date shall receive a monthly pension benefit equal to 2 percent of his or her Average Monthly Salary multiplied by his or her Service, plus an additional .5 percent of his or her Average Monthly Salary for each additional year of Service for employment after 15 years for years served on or after January 1, 1975, until a maximum of 30 years of Service is reached.

(B) Division B Employees:

1. An Employee in Division B whose employment terminates on or after his or her Normal Retirement Date shall receive a monthly pension benefit equal to 1.20 ~~1.15~~ percent of his or her Average Monthly Salary multiplied by his or her Service.

2. An Employee in Division B who was previously a member of Division A whose employment terminates on or after his or her

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Normal Retirement Date shall receive a pension calculated as in subsection (B) 1. of this section subject to the following minimum benefits: said Employee shall not receive less than his or her Accrued Pension in Division A (calculated as in (A) above), plus 1.20 ~~1.15~~ percent of his or her Average Monthly Salary multiplied by his or her Service after his or her Date of Election. For the purposes of determining an Employee's Accrued Pension in Division A under this subsection, his or her Average Monthly Salary shall be calculated as of the Date of Election and his or her Service shall be Service prior to the Date of Election.

Section 2. This act shall take effect October 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 891 Local Occupational License Taxes
SPONSOR(S): Goldstein and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1822

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	Camechis	Hamby
2) Finance & Tax Committee	6 Y, 0 N	Rice	Diez-Arguelles
3) Fiscal Council		Rice ACR	Kelly
4)			
5)			

SUMMARY ANALYSIS

This bill allows a municipality that adopted a local occupational license tax ordinance after October 1, 1995, to revise its current tax rate or classification structure before October 1, 2006. The municipality must do this in accordance with s. 205.0535, F.S. This section requires the municipality to appoint an equity study commission to make rate and classification recommendations and limits reclassification increases to the following amounts:

- For licenses costing $150 or less, 200 percent;
- For licenses costing more than $150 but not more than $500, 100 percent;
- For licenses costing more than $500 but not more than $2,500, 75 percent;
- For licenses costing more than $2,500 but not more than $10,000, 50 percent; and
- For licenses costing more than $10,000, 10 percent.

A municipal occupational license tax may not be increased by more than $5,000, and revenues generated by the new rate structure may not exceed the sum of the revenue base plus 10 percent of that revenue base. If a municipality revises its occupational license tax ordinance prior to October 1, 2006, license taxes may be increased by up to five percent each subsequent year if approved by a majority plus one of the municipal governing body.

The bill also authorizes counties and municipalities to decrease or repeal occupational license taxes.

This bill does not have a fiscal impact on state government, and will have an indeterminate impact on local government revenues.

This bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes – This bill provides authority for municipalities to revise current occupational license tax ordinances that were adopted after October 1, 1995. The bill also permits municipalities and counties to lower or eliminate local occupational license taxes. Therefore, this bill may result in lower or higher occupational license taxes for some taxpayers depending on the actions of the local governments.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 205.0535, F.S., authorized counties and municipalities to revise occupational license tax ordinances prior to October 1, 1995. In order for a county or municipality to reclassify businesses, professions, or occupations and establish new rate structures under this section, the municipality or county had to first establish an equity study commission composed of representatives of the business community within the local government's jurisdiction. The equity study commission was required to recommend a classification system and rate structure for local occupational license taxes. The local government was authorized to adopt by majority vote a new occupational license tax ordinance after considering the equity study commission recommendation. A reclassification could not increase the occupational license tax by more than the following:

- For licenses costing $150 or less, 200 percent;
- For licenses costing more than $150 but not more than $500, 100 percent;
- For licenses costing more than $500 but not more than $2,500, 75 percent;
- For licenses costing more than $2,500 but not more than $10,000, 50 percent; and
- For licenses costing more than $10,000, 10 percent.

A license tax could not be increased by more than $5,000 and the revenues generated by the new tax rate structure could not exceed the sum of the revenue base plus 10 percent of that revenue base. The revenue base is the sum of the occupational license tax revenue generated by licenses issued for the most recently completed local fiscal year or the amount of revenue that would have been generated from the authorized increases under s. 205.043(1)(b), F.S., whichever is greater, plus any revenue received from the county under s. 205.033(4), F.S.

If a municipality or county revised its occupational license tax ordinance prior to October 1, 1995, license taxes may be increased each subsequent year by up to five percent if approved by a majority plus one of the municipal governing body.

Unless a municipality revised its rate or classification structure in accordance with s. 205.0535, F.S., prior to October 1, 1995, or adopted a new occupational license tax ordinance under s. 205.0315, F.S., an occupational license tax levied under s. 205.043, F.S., may not exceed the rate in effect for the year beginning October 1, 1971 plus increases authorized in the section. The amount of the increase above the license tax rate levied on October 1, 1971, is limited as follows:

- For taxes under $100, a 100% increase is permitted;
- For taxes between $101 and $300, a 50% increase is permitted;
- For taxes over $300, a 25% increase is permitted; and
- For taxes levied at a graduated or per unit rates, a 25% increase is permitted.

Beginning October 1, 1995, a county or municipality that had not adopted an occupational license tax ordinance or resolution may do so under s. 205.0315, F.S. The occupational license tax rate structure and classifications in the adopted ordinance must be reasonable and based upon the rate structure and classifications prescribed in ordinances adopted by adjacent local governments that adopted an ordinance prior to October 1, 1995 under s. 205.0535, F.S. If no adjacent local government has done so, or if the governing body of the county or municipality finds that the rate structures or classifications of adjacent local governments are unreasonable, the rate structure or classifications prescribed in its ordinance may be based upon those prescribed in ordinances adopted by local governments that adopted an ordinance prior to October 1, 1995 under s. 205.0535, F.S., in counties or municipalities that have a comparable population.

Effect of Proposed Changes

This bill amends s. 205.0535, F.S., to allow a municipality that adopted a local occupational license tax ordinance after October 1, 1995 to revise its current tax rate or classification structure before October 1, 2006. If a municipality wishes to revise its local occupational license tax ordinance as authorized by this bill, the municipality must follow the same procedures that applied to revisions of rate and classification structures made prior to October 1, 1995 under s. 205.0535, F.S.

The bill also grants counties and municipalities authority to decrease local occupational license taxes. Currently, the statute does not explicitly grant such authority and the Attorney General's Office has advised a number of jurisdictions that, in the absence of such authority, no decrease or elimination is possible. In AGO 2002-81, the Attorney General stated:

> On several occasions, this office has addressed the authority of a municipality to alter its occupational license tax ordinance, through the exemption of certain categories of occupations or businesses or by decreasing the rates for a particular classification. In the absence of legislative authorization, this office has determined that no such alteration may be made. Given the number of instances where local governments have sought to make such alterations, it may be advisable to seek legislative changes to provide the necessary authority.

Lastly, the bill specifies that nothing in ch. 205, F.S., may be construed to prohibit a municipality or county from decreasing or repealing any license tax authorized under that chapter.

C. SECTION DIRECTORY:

Section 1. Amends section 205.0535, F.S., to allow municipalities that adopted an occupational license tax ordinance after October 1, 1995 to reclassify businesses, professions, and occupations, and establish a new rate structure prior to October 1, 2006; allows municipalities and counties to decrease or repeal license tax rates.

Section 2. Provides that the bill shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill will give municipalities more flexibility to revise local occupational license taxes, including the ability to increase, reduce, or eliminate those taxes.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill grants municipalities and counties the authority to eliminate or reduce local occupational license taxes. As such, some taxpayers may see a reduction in or elimination of these taxes. The bill also allows some municipalities to revise their current license tax or classification structure in a manner that may result in an increase of license taxes for some taxpayers.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None

A bill to be entitled

An act relating to local occupational license taxes; amending s. 205.0535, F.S.; updating provisions authorizing reclassification and new rate structure revisions to local occupational license taxes by ordinance; deleting counties from such authorization provisions; authorizing decreasing local occupational license tax rates; providing construction with respect to decreasing or repealing such taxes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (4) of section 205.0535, Florida Statutes, are amended to read:

205.0535 Reclassification and rate structure revisions.--

(1) By October 1, 2006 ~~1995~~, any municipality that has adopted by ordinance an occupational license tax after October 1, 1995, ~~or county~~ may~~,~~ by ordinance~~,~~ reclassify businesses, professions, and occupations and may establish new rate structures, if the conditions specified in subsections (2) and (3) are met. A person who is engaged in the business of providing local exchange telephone service or a pay telephone service in a municipality or in the unincorporated area of a county and who pays the occupational license tax under the category designated for telephone companies or a pay telephone service provider certified pursuant to s. 364.3375 is deemed to have but one place of business or business location in each

municipality or unincorporated area of a county. Pay telephone service providers may not be assessed an occupational license tax on a per-instrument basis.

(4) After the conditions specified in subsections (2) and (3) are met, municipalities and counties may, every other year thereafter, increase or decrease by ordinance the rates of local occupational license taxes by up to 5 percent. An ~~The~~ increase, however, may not be enacted by less than a majority plus one vote of the governing body. Nothing in this chapter shall be construed to prohibit a municipality or county from decreasing or repealing any license tax authorized under this chapter.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1311 CS Qualified Job Training Organizations
SPONSOR(S): Troutman
TIED BILLS: **IDEN./SIM. BILLS:** SB 164

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee	10 Y, 0 N, w/CS	Olmedillo	Carlson
2) Fiscal Council		McAuliffe	Kelly
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

This bill provides for the certification by the Office of Tourism, Trade and Economic Development (OTTED) of qualified job-training organizations for the purpose of receiving and distributing funds to encourage and provide economic development through capital construction, improvements, or the purchase of equipment that will expand employment opportunities.

The bill further:

- Defines the term "qualified job training organization";
- Authorizes the Auditor General to examine a certified organization's use of funds for compliance with this provision;
- Permits OTTED to recover any misused funds as determined by the Auditor General and pursuant to laws and rules governing tax assessment;
- Permits the revocation of certification where funds have been misused; and
- Requires that funds for qualified job training organizations be distributed through OTTED.

The bill provides a nonrecurring appropriation of $3 million from the General Revenue Fund in fiscal year 2006-07 and for the following ten fiscal years, totaling $30 million, to a qualified job-training organization meeting the requirements of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government: The bill provides state funding to a private non-profit organization and gives the Auditor General audit authority over said organization.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

A number of job training organizations currently exist in Florida. These organizations train individuals for a variety of jobs ranging from employment in the service industry to executive positions.

Representatives from one job-training organization, Goodwill Industries, report that 95,000 individuals annually participate in vocational programs. Last year, Goodwill helped approximately 24,000 individuals obtain jobs in Florida resulting in more than $234 million in new salaries.

Goodwill representatives also report that the majority of the organization's revenue is invested in creating jobs for those with disabilities, developing training opportunities that lead to employment in the local communities and assisting in job placement. The primary source of revenue for Goodwill is its retail operation. It currently operates over 300 stores across Florida which generate over $100 million dollars annually, employs about 5,700 Floridians and pays more than $7 million to the state in sales taxes.

Effect of Proposed Changes

The bill appropriates $3 million per year from nonrecurring general revenue for ten years to OTTED to distribute to qualified job training organizations. For fiscal year 2006-2007, funding will be provided from nonrecurring general revenue. For the following ten fiscal years, from 2007-2008 through 2016-2017, funding will be appropriated from nonrecurring general revenue or as specifically provided in the General Appropriations Act. The funds will go directly to OTTED for distribution to organizations meeting the requirements of this bill. The funds must be used to encourage economic development through capital construction, capital improvements, or the purchase of equipment.

The bill specifies criteria to become a "qualified job training organization." This section of the bill also outlines OTTED's duties regarding certification of these organizations, funding parameters and the Auditor General's responsibility regarding examining an organization's use of state funds.

The bill defines a "qualified job training organization" as an organization that:

- Is accredited by the Commission for Accreditation of Rehabilitation Facilities;
- Collects Florida state sales tax;
- Has more than 100 locations within the state;
- Is exempt from income taxation under s. 501(c)(3) or s. 501(c)(4) of the Internal Revenue Code of 1986, as amended;
- Specializes in the retail sale of donated items;
- Provides job training and employment services to individuals with workplace disadvantages and disabilities; and
- Uses a majority of its revenues for job training and placement programs that create jobs and foster economic development.

The bill also provides that, in order to receive funding, an organization must be certified as a qualified job training organization by OTTED.

The bill also requires OTTED to enter into a performance contract with the qualified job training organization that includes performance conditions and sanctions for failure to perform as well as a requirement that salaries for officers and employees of the job training organization comply with section 4958 of the Internal Revenue Code, which prohibits excessive compensation.

The bill requires that certified qualified job training organizations only use their funding to encourage and provide economic development. More specifically, the funding must be used for capital construction, capital improvements, and the purchase of equipment that will result in expanded employment opportunities.

Failure to use proceeds as required under this bill constitutes grounds for revocation of the organization's certification.

C. SECTION DIRECTORY:

Section 1. Creates s. 288.1171, F.S., to provide definitions, duties for OTTED, distribution of funds, specific uses of the funds, grant of audit authority, and revocation of certification.

Section 2. Provides for appropriations.

Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill provides a nonrecurring appropriation of $3 million from the General Revenue Fund in fiscal year 2006-2007. For the following ten fiscal years, from 2007-2008 through 2016-2017, the bill provides a $3 million annual nonrecurring appropriation from the General Revenue Fund, or as specifically provided in the General Appropriations Act.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires the Legislature to appropriate $3 million annually for the next ten years to qualified job-training organizations that have been certified by OTTED, therefore, providing funding for all qualified organizations.

D. FISCAL COMMENTS:

This bill requires the Legislature to appropriate $3 million annually for the next ten years to qualified job-training organizations that have been certified by OTTED.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Economic Development, Trade and Banking Committee adopted two amendments to conform the bill to the Senate companion. The bill makes the following changes:

- It requires Office of Tourism, Trade and Economic Development to enter into a performance contract with the qualified job training organization that includes performance conditions and sanctions for failure to perform as well as a requirement that salaries for officers of the job training organizations not be excessive; and
- It removes incorrect language regarding an Auditor General audit of the qualified job training organization and the assessment of taxes owed by OTTED.

CHAMBER ACTION

The Economic Development, Trade & Banking Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to qualified job-training organizations; creating s. 288.1171, F.S.; defining the term "qualified job-training organization"; providing for the Office of Tourism, Trade, and Economic Development to certify qualified job-training organizations; providing for the distribution of certain funds to a certified organization pursuant to contract; providing contract requirements; specifying uses of the funds; providing for revocation of certification under certain circumstances; providing appropriations for a certain period; providing for appropriations to be distributed through the Office of Tourism, Trade, and Economic Development; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 288.1171, Florida Statutes, is created to read:

288.1171 Qualified job-training organizations; certification; duties.--

(1) As used in this section, the term "qualified job-training organization" means an organization that satisfies all of the following:

(a) Is accredited by the Commission for Accreditation of Rehabilitation Facilities.

(b) Collects Florida state sales tax.

(c) Operates statewide and has more than 100 locations within the state.

(d) Is exempt from income taxation under s. 501(c)3 or s. 501(c)4 of the Internal Revenue Code of 1986, as amended.

(e) Specializes in the retail sale of donated items.

(f) Provides job training and employment services to individuals who have workplace disadvantages and disabilities.

(g) Uses a majority of its revenues for job training and placement programs that create jobs and foster economic development.

(2) To be eligible for funding, an organization must be certified by the Office of Tourism, Trade, and Economic Development as meeting the criteria in subsection (1). After certification, the Office of Tourism, Trade, and Economic Development may release funds to the qualified job training organization pursuant to a contract with the organization. The contract must address the performance conditions and sanctions for failure to meet the performance conditions and must require

that salaries paid to officers and employees of the qualified job training organization comply with s. 4958 of the Internal Revenue Code of 1986, as amended.

(3) A qualified job-training organization that is certified must use the proceeds provided solely to encourage and provide economic development through capital construction, improvements, or the purchase of equipment that will result in expanded employment opportunities.

(4) The failure to use the proceeds as required constitutes grounds for revoking certification.

Section 2. The sum of $3 million per year is appropriated from nonrecurring general revenue for 10 years to the Office of Tourism, Trade, and Economic Development for the purpose specified in s. 288.1171(3), Florida Statutes. For the 2006-2007 fiscal year, these funds are appropriated from nonrecurring general revenue. For the 2007-2008 through 2016-2017 fiscal years, the funds shall be appropriated from nonrecurring general revenue or as specifically provided in the General Appropriations Act. The funds shall be distributed by the Office of Tourism, Trade, and Economic Development to organizations meeting the requirements of s. 288.1171, Florida Statutes, solely to encourage and provide economic development through capital construction, improvements, or the purchase of equipment that will result in expanded employment opportunities.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1471 CS Florida Energy Diversity and Efficiency Act
SPONSOR(S): Attkisson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	13 Y, 1 N, w/CS	Holt	Holt
2) Fiscal Council		Dixon	Kelly
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

HB1471 creates the "Florida Energy Diversity and Efficiency Act," to govern the siting of new nuclear power plants. The Act is modeled after the existing Power Plant Siting Act, Chapter 403.509, Florida Statutes.

The bill streamlines the siting process while ensuring public input. The legislation also allows the Governor and Cabinet, sitting as the Siting Board, to assess the need and approve/deny the plant.

The bill consolidates all issues related to the certification of a new nuclear power plant into one hearing before an administrative law judge.

The definitions for "associated facilities" and "associated transmission lines," are broadened to create a single forum for "one-stop" permitting of all transmission issues. The bill also defines the scope of intervention in transmission line siting procedures in an effort to eliminate unnecessary delays.

Public Service Commission's (PSC) need determination is also included in the bill, and the bill imposes a 135-day schedule on the PSC for issuing a need order. Issues are defined that the PSC can address in the need proceeding and requires the PSC to grant the utility's petition upon a finding that the plant will (1) provide needed baseload capacity; (2) enhance the reliability of production in the state by improving fuel diversity and lessening reliance on natural gas and oil; (3) mitigate air emissions and; (4) provide the most cost-effective – though not necessarily the least-cost –generating alternative. Further, the bill excludes nuclear plants from the PSC bid rule.

Other provisions provide that once a need petition is granted, costs incurred shall not be subject to challenge unless and only to the extent the PSC finds, based on clear and convincing evidence offered at a hearing initiated by the PSC, that the utility was imprudent in incurring costs significantly in excess of the initial, non-binding estimate provided by the utility.

The total fiscal impact is unknown at this time. However, general estimates from PSC indicate that the costs for constructing a nuclear plant will not change as a result of this act. The change in the rate recovery mechanism will allow a utility to recoup its prudently incurred costs sooner in the process. The bill does not appear to provide any type of tax credit or economic incentive for construction that would create a known fiscal impact.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security: Through the further diversification of the State fuel supply, the siting of new nuclear generation may lessen the dependence on any one particular fuel, in order to ensure power reliability.

B. EFFECT OF PROPOSED CHANGES:

Background

Department of Environmental Protection (DEP)
Certification of nuclear fueled, steam turbine, electric power generation facilities is presently done under the authority of the Electrical Power Plant Siting Act (PPSA), ss. 403.501-403.518 and ss. 403.519, F.S. The PPSA is a centralized, coordinated licensing process. This process preempts all state, regional, and local permits and other authorizations that have jurisdiction for regulation and siting of industrial facilities. All affected agencies participate as parties to the process and all non-procedural requirements of the preempted agencies are included in the certification as conditions of certification.

The PPSA is highly procedural and includes a determination of need by the Public Service Commission (PSC) ss. 403.519, F.S., a mandatory land use hearing and a mandatory certification hearing by an administrative law judge, with ultimate approval/denial authority vested in the Siting Board (Governor and Cabinet). The DEP coordinates the process.

An administrative law judge is involved from the beginning, and the process is handled as litigation and requires the exchange of most documents as legal filings. Persons wishing to become formally involved in the process, for the most part, must become parties to the proceeding. Additional opportunities exist for public comment.

Public Service Commission (PSC)
A precedent condition for an electrical project to proceed under the PPSA (s. 403.508(3)) is an affirmative determination of plant need from the PSC. In implementing the requirements of s. 403.508(3), the PSC has established rules controlling the information to be included in a petition for need and the schedule of administrative events in order to meet the requirements of the PPSA. Section 403.519, F.S., requires the PSC, in considering whether to approve a need petition, to take into account several criteria. These criteria include the need for electric system reliability and integrity; the need for adequate electricity at a reasonable cost; whether the proposed plant is the most cost-effective alternative available; available conservation measures which mitigate the need for the plant; and other matters within the PSC's jurisdiction.

In determining whether the proposed plant is the most cost-effective alternative, the PSC established Rule 25-22.082, F.A.C., Selection of Generating Capacity. This rule requires utilities to request bids for alternatives to its proposed plant in order to meet the identified need for power. The effect of the rule is to provide the PSC with more complete information about potential alternatives to the proposed power plant to use as a consideration in its deliberation of the project's cost-effectiveness.

Federal Legislation
The Energy Policy Act of 2005 provides significant financial incentives that may inure to the benefit of Florida consumers. These incentives, however, are limited to the first 6,000 megawatts of new nuclear plants constructed. To date, utilities in a number of other states have announced their intent to build new nuclear plants.

EFFECT OF PROPOSED CHANGES

Section 1. The act may be cited as the Florida Energy Diversity and Efficiency Act.

Section 2. The bill provides legislative purpose declaring that it is in the public interest and critical to the health, prosperity, and general welfare of the state and its citizens to promote the expansion of nuclear generation by the siting of new nuclear power plants and associated facilities within the state.

Section 3. Definitions: The bill provides definitions as used in this act. The definitions are adapted largely from those used in the PPSA, with exceptions for using the term "nuclear" in lieu of "electric." Noteworthy, however, are the following definitions which are expanded from the PPSA for use in the act:

(4) "Applicant" means any electric utility as defined under s. 366.8255(1)(a)[1], Florida Statutes, city, town, county, public utility district, electric cooperative, or joint operating agency, or combination thereof, authorized under Florida law to engage in the business of generating, transmitting, or distributing electric energy to retail electric customers in the state.

The regulatory approval of a nuclear plant in the bill only applies to retail serving utilities as defined in s. 366.8255(10)(a). This allows for the inclusion of municipal and rural electric utilities. Historically, no individual Florida municipal or rural electric cooperative has sought to construct a nuclear unit. However, joint ownership arrangements could exist, and these entities as a result could have ownership shares of future nuclear plants.

(21) "Nuclear power plant" means, for the purpose of certification, any electrical generating facility using any process involving nuclear materials, fuels, or processes and, at the applicant's election, includes associated facilities and associated transmission lines.

The definition includes, at the applicant's option, associated transmission lines which encompass not only lines and substations directly interconnected to nuclear plants, but any transmission upgrades or expansions on the state's transmission system. As a result, any grid-wide upgrades required to reliably handle the electric output of the proposed nuclear plant would be considered as part of the licensing process required under this act.

The bill deletes the definitions used in PPSA for "person" and "sufficiency."

Section 4. Department of Environmental Protection; powers and duties enumerated: Powers are designated to the DEP to adopt rules to implement the act provisions and conduct various studies.

However, the concern was raised the bill provides DEP with no authority to issue final orders if not hearing is requested.

Section 5. Applicability and certification: Provisions provide that the act applies exclusively to any new nuclear power plant and to any expansion in steam-generation capacity of any existing nuclear power plant. Any new construction and capacity expansion occurring after the effective date of this requires certification under this act. The bill provides an exemption from modification of certification for changes to fuel make-up that result in no increase of generation capacity. The processing of any federally delegated or approved program shall be processed within the time constraints of the certification review.

Section 6. Distribution of application; schedules: The bill provides that:

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[1] (1) As used in this section, the term:

(a) "Electric utility" or "utility" means any investor-owned electric utility that owns, maintains, or operates an electric generation, transmission, or distribution system within the State of Florida and that is regulated under this chapter.

- within 7 days after a site certification application (SCA) is filed, the DEP shall provide the applicant and the Division of Administrative Hearings (DOAH) the names and addresses of affected parties.
- within 7 days after an SCA is determined complete, the DEP distributes the processing schedules. (According to DEP, this could be 66 days after receipt of a SCA. See the correlating note in s. 8 regarding 45 days after receipt for a SCA completeness determination.)
- within 7 days after DEP provides the names and addresses of the affected parties, the applicant distributes copies of the application to all affected parties.

Section 7. Appointment of administrative law judge: The bill provides that:

- within 7 days of receipt to the SCA, the DEP request DOAH to designate and administrative law judge (ALJ).
- within 7 days of receipt of the DEP request, DOAH appoints an ALJ.

Section 8. Determination of completeness: The bill provides that:

- within 30 days of distribution of the SAC, agencies are to submit recommendations on completion to DEP
- within 45 days of distribution, the DEP submits its statement on completeness with the applicant and DOAH. (The bill combines at this point the determination of completeness and the determination of sufficiency which are separate concepts in PPSA).

If a finding of incompleteness is declared, the applicant may: 1) withdraw SCA or amendment, or 2) within forty days or such later date as authorized by department rules, file additional information (DEP then has thirty days to issue a second completeness finding), or 3) ask for additional time to file additional information, or 4) ask for an administrative hearing. If a hearing is requested, the request must be filed within fifteen days. If a hearing is requested, the request must be filed within fifteen days. The hearing shall be within twenty-one days of request and ALJ's decision to be within ten days of end of hearing and all processing time-clocks are tolled until the ALJ's decision.

Section 9: Land use and zoning consistency: This section is created to generally streamline the land use and zoning determination. The bill requires an applicant to include in its application a statement of consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances. Local government is to file with all relevant parties with 80 days its determination consistency of the site and its directly associated facilities with existing land use plans and zoning ordinances. The applicant is to then publish the notice of consistency determination in accordance with s. 17(1)(b). Substantially affected individuals, within 15 days of the published notice, shall file a petition of dispute with DEP.

By stipulation among the applicant, local government, and DEP, the dates in this section may be altered pursuant to s. 403.5095.

If it is determined by the local government that the proposed site, or directly associated facility conform with existing land use plans and zoning ordinances, in effect as of the date of the application, and no petition has been filed, the responsible zoning or planning authority shall not change the land use plans or zoning ordinances, in order to foreclose construction and operation of the proposed site, or directly associated facilities, unless certification is subsequently denied or withdrawn.

Section 10. Preliminary statements of issues, reports, and studies: Affected agencies within 45 days of SCA distribution are to file preliminary statement of issues. Statutory agencies, or any other agency, must submit agency reports within 60 days of completeness. All proposed conditions of certification shall specify specific statute, rule, or ordinance which authorizes the condition. No condition may be included in the conditions of certification without such specific authorization.

DEP issues a written analysis 85 days after application determined complete. Analysis contains statement of compliance with agency rules, copies of studies and reports, comments from other agencies or persons, DEP recommendations on disposition of the application, variances or exemptions and exceptions, and DEP's recommendation of federal permits.

Section 11. Notice of department recommendation, petition for certification hearing: DEP and the applicant shall publish notice of DEP's recommendation on the SCA and any associated facilities in newspapers of the affected areas.

Section 12. Land use and certification hearing, parties, participants: The bill creates this section to address land use and certification hearings as follows:

Land use hearing: provides that if a petition is filed for a land use hearing relating to the proposed site or directly associated facility the ALJ as expeditiously as possible, but no later than 30 days after DEP's receipt of the petition shall conduct the hearing. The land use hearing is to be held whether or not the application is complete. However, incompleteness of information may be used by the local government in making its determination on consistency with land use. If in the recommended order, the ALJ finds a site inconsistent with local land use and zoning requirements, the bill outlines the procedure that follows such situations.

Additionally, it clarifies that local land use plans and zoning ordinances may be preempted by the siting board.

If any party or person whose substantial interests are affected, files a petition for a certification within 14 days after DEP's notice of certification, the designated ALJ shall no later than 260 days hold a hearing. The PSC affirmative determination of need is a condition precedent to the conduct of the certification hearing. For timely petitions for a certification hearing, the hearing shall be held at a location in proximity to the site. This hearing constitutes the sole hearing allowed by ch. 120, to determine the party's interest regarding any required agency license or any related permit required by any federally delegated or approved permit program. The ALJ's recommended order shall be issued within 60 days. The amendment provides a list of the parties to the proceeding.

Provisions are included in the bill for the listed parties, and others, to file intent to be a party or a waiver of participation. The ALJ shall have all powers and duties granted by ch., 120, this act, and the rules of DEP, and the Administration Commission.

Section 13. Final disposition of application: If no certification hearing is held, or within 60 days of ALJ's recommended order following a certification hearing, the SB must approve or deny issuance of a certification by written order, If denied, the reasons for denial are to also be included in the order. Criteria are provided upon which the SB is to consider whether an SCA is to approve in whole, with modifications or conditions, or denied. If certification is denied, the SB is required to set forth in writing actions needed to secure approval. Concerns were raised in this section concerning: 1) that the bill does not contemplate fatal error that cannot be fixed; 2) that only parties to the proceeding may appear before the SB thereby creating a situation that is contrary to Government in the Sunshine; 3) that local comprehensive plans are to be overridden by the SB to allow the project at the selected site.

Section 14. Alteration of time limits: The provisions in this section are identical to the PPSA.

Section 15. Superseded laws, regulations, and certification power:

(1) If any provision of this act is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, this act shall govern and control, and such law, rule, regulation, or ordinance shall be deemed superseded for the purposes of this act.

(2) The state hereby preempts the siting, regulation, and certification of nuclear power plant sites and nuclear power plants as defined in this act.

(3) The board may adopt reasonable procedural rules pursuant to ss. 120.536(1) and 120.54 to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, one-stop licensing process.

Section 16. Effect of certification: The majority of these provisions model the PPSA. However, concern was raised that agencies have 60 days after completeness to notify an applicant that a variance, exemption or other relief is needed. This is the same date agency reports are due. It appears the bill offers no response time to the applicant, and no time is given to DEP to include the additional information into the DEP report.

Section 17. Notice; costs of proceeding: The provisions of this section model the PPSA, except for (1)(b) and (c). Section (1)(b) provides that notice of the land use determination made pursuant to section 9(1) within 15 days after the determination is filed. Section(1)(c) provides notice of land use hearing, which shall be published as specified in subsection (2), no later than 15 days before the hearing.

Section 18. Revocation or suspension of certification: The provisions of this section model the PPSA.

Section 19. Review: The bill provides that proceedings under this act shall be subject to judicial review in the Florida Supreme Court. Separate appeals of the certification and federally delegated or approved permit programs shall be consolidated for purposes of judicial review. Review on appeal shall be based solely on the record before the board and briefs to the court and shall be limited to determining whether the certification order conforms to the constitution and laws of this state and the United States and is within the authority of the board under this act. The Supreme Court shall expeditiously as practicable review the case.

Section 20. Enforcement of compliance: The provisions of this section model the PPSA.

Section 21. Availability of information: The provisions of this section model the PPSA.

Section 22. Modification of a certificate: The majority of this section models the PPSA.

Section 23. Supplemental applications for sites certified for ultimate capacity: The majority of this provision models the PPSA.

Section 24. Fees; disposition: The bill provides fee provisions similar to the PPSA.

Section 25. Exclusive forum for determination of need: The provisions of this section are similar to the PPSA. The PSC is the sole forum for determination of electrical need. Section 403.519 reads in part:

> In making its determination, the commission shall take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, and whether the proposed plant is the most cost-effective alternative available.

The bill proposes new language in s. (2)(a) that reads:

> In making its determination to either grant or deny a petition for determination of need, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost.

According to the PSC, it has and can examined fuel diversity and type of generating plant that is being requested as part of its consideration of a need petition. The bill however makes fuel diversity and base-load generating capacity specific criteria.

Section (2)(c) has outlined that the Commission "shall grant" a petition for need if it finds that the proposed nuclear plant will: 1) provide needed baseload capacity, 2) enhance the reliability of electric power within the state and reduce Florida's dependence on fuel oil and natural gas, and 3) provide a "cost-effective, although not necessarily the least cost source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, mitigate air emission effects within the state, and contribute to the long-term stability and reliability of the electric grid."

The PSC has limited expertise but no jurisdiction as it relates to mitigation of air impacts within the state. It does however consider environmental costs associated with proposed power plants.

Section (3) exempts nuclear plants from the FPSC Rule 25-22.082, Selection of Generating Capacity. This rule requires utilities prior to requesting a determination of need to solicit bids from alternative providers of generating capacity.

The effect of the rule is to provide the PSC with more complete information about potential alternatives to the proposed power plant to use as a consideration in its deliberation of the project's cost-effectiveness. Requirements of the bid rule can be waived upon a showing by a public utility and a finding by the PSC "that a proposal not in compliance with this rule's provisions will likely result in a lower cost supply of electricity to the utility's general body of ratepayers, increase the reliable supply of electricity to the utility's general body of ratepayers, or otherwise will serve the public welfare." The exemption of nuclear units from this process would reduce the amount of time necessary to proceed with a need hearing.

Section (4) addresses procedural issues. First, the PSC's final order will serve as the report that must be submitted to the DEP under Section 9(2)(a)2. After consideration of any Motions for Reconsideration, a party may appeal the final PSC's order to the Florida Supreme Court. Any such appeals must be based on the record before the PSC and the issues to be considered are limited to whether the order "conforms to the constitution and laws of this state and the United States and is within the authority of he Commission under this section." It also directs the Supreme Court to hear such appeals as "expeditiously as possible".

Section (5) outlines cost recovery with specific direction that once the need determination has been granted, the utility has the right to recover any costs associated with "siting, design, licensing, or construction of the plant...." The only mechanism for permitting any disallowance of costs would be based on the PSC finding of imprudence in the utility's "siting, licensing and construction" of the plant. According to the PSC, it currently uses a standard to determine prudence based on a "preponderance of the evidence." This bill creates a more difficult "clear and convincing" evidence standard that must be applied by the in determining what expenditures could be deemed imprudent. Section 24(5) also states that imprudence may not be found for any costs outside the utility's control and then proceeds to enumerate a list of such events "including, but not limited to" delays in getting necessary permits, litigation delays, construction and equipment costs, or changes in laws or regulations.

Under traditional ratemaking practice, expenditures for any pre-operational costs to build power plants would accrue in a regulatory account and when the plant becomes operational, all costs in this account would become part of the total plant cost that could be placed in rate. PSC practice does allow public utilities to request early cash flows to occur for power plant construction costs upon a showing that the utility would suffer financial hardship without such early recovery of costs.

Section 26. Cost recovery for the siting, design, licensing and construction of nuclear power plants. The bill provides definitions as used in this section. Within 6 months after the effective date of this act, the PSC shall establish, by rule, alternative cost recovery mechanisms for the recovery of cost incurred in the siting, design, licensing, and construction of nuclear power plants. Such mechanism shall be designed to promote utility investment in nuclear plants and allow for the recovery in rates all prudently

incurred costs, with exceptions as listed in the bill. After an affirmative determination of need, a utility may petition the PSC for cost recovery as permitted by this section and commission rules.

Provisions are included that outline the cost recovery method. The utility is required to annually report the budgeted and actual costs as compared to the estimated inservice cost of the nuclear plant pursuant to 25(2)(b). In the event, the utility elects not to complete or is precluded from completing construction, it shall be allowed to recover all prudent preconstruction and construction costs incurred following the determination of need. These costs are to be recovered through the capacity cost recovery clause, over a period equal to the period during which the costs were incurred ,or 5 years, whichever is greater. The unrecovered balance during the recovery period will accrue interest at the utility's weighted average cost of capital.

Section 27. This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

See Effect of Proposed Changes.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The fiscal impact is yet to be determined.

2. Expenditures:

The fiscal impact is yet to be determined.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The total fiscal impact is yet to be determined. However, general estimates from PSC indicate that the cost for constructing a nuclear plant will not change. The rate recovery mechanism will allow the utility to recoup its prudently incurred costs sooner than later.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Rulemaking authority is granted to the DEP to implement the provisions of the act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the DEP, the act would apply to any electric power generation that is fueled by a nuclear process. Whereas the PPSA only applies to steam turbine electric power generation (including nuclear fueled). However, all nuclear fueled electric power generation is by steam turbine.

The deletion of the reference to nuclear fuels in the PPSA does not relieve a generation facility producing steam turbine generated electric power from the need for certification under the PPSA. This means two certifications would be required: one for the steam turbine generation (PPSA), and one for the use of a nuclear fuel (EDEA). Two certifications require two fees. Since the two applications would be virtually identical, all other processes could carry forward as one, however, all official documents would have to be produced and processed separately for each act.

Three concerns were raised in this regard to the definition of "nuclear power plant": 1) definition goes beyond the current definition of associated facilities contained in the PPSA. 2) references to the notice provisions and request for hearings use the term "nuclear power plant" and make no mention of "associated facilities. 3) in order for the Siting Board to comprehensively balance the cost and benefits of an new nuclear power plant, all directly associated facilities should be included in the application and evaluated by the reporting agencies, and should not be at the applicant's option.

Another concern has been raised regarding the provision in section 19 creating an avenue of appeal contrary to the requirements of section 10.

Further, the PSC points out that while it is unlikely that any municipal or cooperative utility would initiate a need determination for a nuclear unit, the provisions of this act would appear to apply to them. As a matter of administrative review, all of the provisions of this bill could appropriately apply to municipal or cooperative utilities, except for the cost recovery provisions contained in 24(5). The PSC does not have any authority over how and what time period municipal or cooperative utilities finance power plants and recovery pre and post construction costs.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, the Utilities and Telecommunications Committee adopted a strike-all amendment to the bill. The strike-all added two new sections 9 and 26 and all subsequent sections were renumbered. The strike-all also added language is section 12 related to land use.

Section 9: Land use and zoning consistency: This section is created to generally streamline the land use and zoning determination. The bill requires an applicant to include in its application a statement of consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances. Local government is to file with all relevant parties with 80 days its determination consistency of the site and its directly associated facilities with existing land use plans and zoning ordinances. The applicant is to then publish the notice of consistency determination in accordance with s. 17(1)(b). Substantially affected individuals, within 15 days of the published notice, shall file a petition of dispute with DEP.

By stipulation among the applicant, local government, and DEP, the dates in this section may be altered pursuant to s. 403.5095.

If it is determined by the local government that the proposed site, or directly associated facility conform with existing land use plans and zoning ordinances, in effect as of the date of the application, and no petition has been filed, the responsible zoning or planning authority shall not change the land use plans or zoning ordinances, in order to foreclose construction and operation of the proposed site, or directly associated facilities, unless certification is subsequently denied or withdrawn.

Section 12: Land use and certification hearing, parties, participants: The amendment added provisions related to land use hearing: providing that if a petition is filed for a land use hearing relating to the proposed site or directly associated facility the ALJ as expeditiously as possible, but no later than 30 days after DEP's receipt of the petition shall conduct the hearing. The land use hearing is to be held whether or not the application is complete. However, incompleteness of information may be used by the local government in making its determination on consistency with land use. If in the recommended order, the ALJ finds a site inconsistent with local land use and zoning requirements, the bill outlines the procedure that follow such situations. Additionally, it clarifies that local land use plans and zoning ordinances may be preempted by the siting board.

If any party or person whose substantial interests are affected, files a petition for a certification within 14 days after DEPs notice of certification, the designated ALJ shall no later than 260 days hold a hearing. The PSC affirmative determination of need is a condition precedent to the conduct of the certification hearing. For timely petitions for a certification hearing, the hearing shall be held at a location in proximity to the site. This hearing constitutes the sole hearing allowed by ch. 120, to determine the party's interest regarding any required agency license or any related permit required by any federally delegated or approved permit program. The ALJ's recommended order shall be issued within 60 days. The amendment provides a list of the parties to the proceeding.

Provisions are included in the bill for the listed parties, and others, to file intent to be a party or a waiver of participation. The ALJ shall have all powers and duties granted by ch., 120, this act, and the rules of DEP, and the Administration Commission.

CHAMBER ACTION

The Utilities & Telecommunications Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to energy diversity and efficiency; providing a short title; providing purpose; providing definitions; providing requirements for the authorization, certification, and siting of nuclear power plants; providing for a Nuclear Power Plant Siting Board; enumerating the related powers and duties of the Department of Environmental Protection, including rulemaking authority; requiring certain application, certification, and licensure of nuclear power plants; specifying applicability to certain nuclear power plants; providing for distribution of certain applications and schedules; directing the Division of Administrative Hearings to appoint an administrative judge to conduct certain hearings; providing for the determination of application and amendment completeness; requiring a review of land use and zoning consistency; requiring affected agencies to submit certain reports; providing requirements

and procedures with respect thereto; requiring public notice of department recommendation and petition for certification hearings; providing for land use and certification hearings; providing requirements and procedures with respect thereto; authorizing the board to have final disposition on certification applications; providing that this act supersedes certain laws and regulations; providing for effect of certification; requiring certain public notice; providing responsibility for certain costs; providing for revocation or suspension of certification; providing for appeal and review of proceedings under the act; providing for compliance enforcement; requiring the department to make certain information relating to power plant siting available to the public; providing requirements and procedures for modification of certification; providing for supplemental applications for sites certified for ultimate site capacity; requiring certain fees; providing for deposit into the Florida Permit Fee Trust Fund and subsequent distribution; requiring the Public Service Commission to hold hearings on determination of need; providing requirements and procedures with respect thereto; creating s. 366.93, F.S.; providing definitions; requiring the Public Service Commission to implement rules related to nuclear power plant cost recovery; requiring a report; providing an effective date.

WHEREAS, the extraordinary and unprecedented global increases in the cost of fuel oil and natural gas, coupled with the state's rapidly growing population and increasing demands for electric energy, have brought into sharp focus the need to enhance fuel diversity, and

WHEREAS, the world growth in demand for fuel oil and natural gas may continue to have further impact on the cost and supply of these resources, and

WHEREAS, the impact of Hurricane Katrina on supplies of natural gas and fuel oil further substantiates the need to alter the balance of fuel diversity in connection with the generation of electricity in the state, and

WHEREAS, the federal Energy Policy Act of 2005 encourages the siting and operation of new nuclear generation by providing tax and other incentives to reduce the costs of such plants, and

WHEREAS, significant federally funded benefits and incentives available under the federal Energy Policy Act of 2005 are available to only the first 6,000 megawatts of new advanced nuclear reactor generating capacity licensed in the United States, and

WHEREAS, operation of new nuclear power generation within the state, particularly if such generation is eligible for the tax and other incentives available under the federal Energy Policy Act of 2005, will benefit the state's electric customers, and

WHEREAS, existing provisions of the Florida Electrical Power Plant Siting Act are inadequate to address the unique issues of siting nuclear power generation within the state and

securing benefits under the federal Energy Policy Act of 2005, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Short title.--This act may be cited as the "Florida Energy Diversity and Efficiency Act."

Section 2. Purpose.--The Legislature finds that the state, its residents, and its economy benefit from diverse sources of fuel for the generation of electricity. Diversity of fuel sources contributes to lower cost electricity and improved reliability of electric supply, as the state will not be dependent upon a particular source of fuel. Nuclear power plants are important sources of electric generation that contribute to the diversity of fuel sources within the state. The state has five operating nuclear power plants that have operated reliably for the benefit of the state, and contributed a stable supply of electricity, with minimal impacts on the state's environment. The citizens of the state and electric power consumers have benefited from the operation of existing nuclear power plants within the state through low-cost and reliable energy production, electric grid reliability, and economic and environmental benefits. The Legislature further finds and declares it is in the public interest and critical to the health, prosperity, and general welfare of the state and its citizens to promote the expansion of nuclear generation by the siting of new nuclear power plants within the state so as to continue these benefits and further ensure the state's access to

safe, reliable, efficient, and affordable electric service, thereby enhancing the state's economic future while protecting the environment. Recent events have shown the state's vulnerability to disruptions and price volatility in its electric supplies from the importation of natural gas and fuel oil from domestic and foreign sources. The federal Energy Policy Act of 2005 contains important provisions to promote the construction and operation of new nuclear power plants in the United States, including financial incentives for qualifying advanced nuclear power plants and incentives that are limited to the first 6,000 megawatts of advanced nuclear power plant generating capacity licensed in the United States. The state would benefit from timely siting of a qualifying advanced nuclear power plant as a source of low-cost electricity. In consideration of the present and predicted growth in electric power needs in this state, and the potential for additional reliable sources of electricity from nuclear power plants, the Legislature finds that there is a need to develop a procedure for the selection and utilization of sites for electrical generating facilities utilizing nuclear energy and for the identification of a state position with respect to each proposed site and nuclear power plant. The Legislature recognizes that the selection of sites for new or expanded nuclear-powered electrical generating plants, including any associated linear facilities, will have a significant impact upon the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. The Legislature finds that the efficiency of the permit application and review process

at both the state and local level would be improved with the implementation of a process in which a permit application for nuclear power plants would be centrally coordinated and all permit decisions could be reviewed on the basis of adopted standards and recommendations of the deciding agencies. A centrally coordinated permitting process would also enhance the state's ability to become the location of a qualifying advanced nuclear power plant. Nuclear power plants may also be the location of or otherwise promote other public benefits for water supply projects, industrial development, or other activities. Legislation that addresses issues unique to the siting of nuclear power plants is required to encourage electric utilities to site and operate new nuclear power plant facilities within the state and to take advantage of provisions of the federal Energy Policy Act of 2005 that operate to reduce the overall costs of such plants. The state shall promote and approve new nuclear-powered electrical generating facilities that will reasonably balance the increasing demands for reliable, cost-effective electric power and decisions about electrical power plant location, construction, and operation with the broad interests of the public.

Section 3. Definitions.--As used in this act:

(1) "Act" means the Florida Energy Diversity and Efficiency Act.

(2) "Agency," as the context requires, means an official, officer, commission, authority, council, committee, department, division, bureau, board, section, or other unit or entity of government, including a regional or local governmental entity.

(3) "Amendment" means a change in the information provided by the applicant to the application for certification made after the initial application filing.

(4) "Applicant" means any electric utility as defined under s. 366.8255(1)(a), Florida Statutes, city, town, county, public utility district, electric cooperative, or joint operating agency, or combination thereof, authorized under Florida law to engage in the business of generating, transmitting, or distributing electric energy to retail electric customers in the state.

(5) "Application" means the documents required by the department to be filed to initiate a certification proceeding and shall include the documents necessary for the department to render a decision on any permit required pursuant to any federally delegated or approved permit program.

(6) "Associated facility" means any facility that directly supports the construction and operation of the nuclear power plant, including, but not limited to, any substation, transmission line that connects the electrical power plant to an electrical transmission network, and right-of-way to which the applicant intends to connect.

(7) "Associated transmission line" means any new or upgraded transmission line that is owned by the applicant and connects the electrical power plant to a electrical transmission network or right-of-way to which the applicant intends to connect, including, at the applicant's option, any proposed terminal or intermediate substation, substation expansion connected to the associated transmission line to be certified,

or new transmission line, upgrade, or improvement of an existing transmission line that is owned by the applicant on any portion of the state's electrical transmission system necessary to support the generation injected into the system from the proposed nuclear power plant.

(8) "Board" means the Governor and Cabinet sitting as the Nuclear Power Plant Siting Board.

(9) "Certification" means the written order of the board approving an application in whole or with such changes or conditions as the board may deem appropriate.

(10) "Completeness" means that the application has addressed all applicable sections of the prescribed application format and that those sections are sufficient in comprehensiveness of data or in quality of information provided to allow the department to determine whether the application provides the reviewing agencies adequate information to prepare the reports required by this act.

(11) "Corridor" means the proposed area within which an associated linear facility right-of-way is to be located. The width of the corridor proposed for certification as an associated facility, at the option of the applicant, may be the width of the right-of-way or a wider boundary, not to exceed a width of 1 mile, within which the right-of-way will be located. The area within the corridor in which a right-of-way may be located may be further restricted by a condition of certification. After all property interests required for the right-of-way have been acquired by the applicant, the boundaries

of the area certified shall narrow to only that land within the boundaries of the right-of-way.

(12) "Department" means the Department of Environmental Protection.

(13) "Designated administrative law judge" means the administrative law judge assigned by the Division of Administrative Hearings pursuant to chapter 120, Florida Statutes, to conduct the hearings required by this act.

(14) "Federally delegated or approved permit program" means any environmental regulatory program approved by an agency of the Federal Government so as to authorize the department to administer and issue licenses pursuant to federal law, including, but not limited to, new source review permits, operation permits for major sources of air pollution, and prevention of significant deterioration permits under the Clean Air Act (42 U.S.C. ss. 7401 et seq.), permits under ss. 402 and 404 of the Clean Water Act (33 U.S.C. ss. 1251 et seq.), and permits under the Resource Conservation and Recovery Act (42 U.S.C. ss. 6901 et seq.).

(15) "License" means a franchise, permit, certification, registration, charter, comprehensive plan amendment, development order, or permit as defined in chapters 163 and 380, Florida Statutes, or similar form of authorization required by law, including permits issued under federally delegated or approved permit programs, but it does not include a license required primarily for revenue purposes when issuance of the license is a ministerial act.

(16) "Local government" means a municipality or county in the jurisdiction of which the nuclear power generating facility is proposed to be located, unless the term is expressly stated to also include the local governments in the jurisdiction of which associated facilities or associated transmission lines are located.

(17) "Modification" means any change in the certification order after issuance, including a change in the conditions of certification.

(18) "Nonprocedural requirements of agencies" means any agency's regulatory requirements established by statute, rule, ordinance, or comprehensive plan, excluding any provisions prescribing forms, fees, procedures, or time limits for the review or processing of information submitted to demonstrate compliance with such regulatory requirements.

(19) "Notice of intent" means that notice which is filed with the department on behalf of an applicant prior to submission of an application pursuant to this act and which notifies the department of an intent to file an application.

(20) "Nuclear power generating facility" means the nuclear-fueled electrical generating facility within a nuclear power plant but, for purposes of this act, excludes any associated facility or associated transmission line.

(21) "Nuclear power plant" means, for the purpose of certification, any electrical generating facility using any process involving nuclear materials, fuels, or processes and, at the applicant's election, includes associated facilities and associated transmission lines.

(22) "Preliminary statement of issues" means a listing and explanation of those issues within the agency's jurisdiction which are of major concern to the agency in relation to the proposed nuclear power plant.

(23) "Public Service Commission" or "commission" means the agency created pursuant to chapter 350, Florida Statutes.

(24) "Regional planning council" means a regional planning council as defined in s. 186.503(4), Florida Statutes, in the jurisdiction of which the nuclear power generating facility is proposed to be located.

(25) "Right-of-way" means land necessary for the construction and maintenance of an associated linear facility, such as a railroad line, pipeline, or transmission line, including associated facilities and associated transmission lines. The typical width of the right-of-way shall be identified in the application. The right-of-way shall be located within the certified corridor and shall be identified by the applicant subsequent to certification in documents filed with the department prior to construction.

(26) "Site" means any proposed location wherein a nuclear power generating facility, or a nuclear power generating facility alteration or addition resulting in an increase in generating capacity, will be located within state jurisdiction. The site may include appropriate buffers and may accommodate facilities constructed by the applicant or an agency to further an objective of an adopted water management district water supply plan. For purposes of this act, the term "site" does not

include any associated facilities or associated transmission lines.

(27) "Site certification" means the final order issued by the board approving with any conditions or modifications a proposed nuclear power plant.

(28) "State comprehensive plan" means that plan set forth in chapter 187, Florida Statutes.

(29) "Water management district" means a water management district, created pursuant to chapter 373, Florida Statutes, in the jurisdiction of which the nuclear power plant is proposed to be located.

Section 4. Department of Environmental Protection; powers and duties enumerated.--The department shall have the following powers and duties in relation to this act:

(1) To adopt rules within 6 months of the effective date of this act pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to implement the provisions of this act.

(2) To prescribe the form and content of the public notices and the notice of intent and the form, content, and necessary supporting documentation and studies to be prepared by the applicant for nuclear power plant site certification applications. The department shall utilize any existing site certification application forms and instructions adopted pursuant to the Florida Electrical Power Plant Siting Act, ss. 403.501-403.518, Florida Statutes, until such new forms are adopted by the department.

(3) To receive applications for nuclear power plant site certifications and to determine the completeness thereof.

(4) To make, or contract for, studies of nuclear power plant site certification applications.

(5) To administer the processing of applications for nuclear power plant site certifications and to ensure that the applications are processed as expeditiously as possible.

(6) To require such fees as allowed by this act.

(7) To conduct studies and prepare a written analysis.

(8) To prescribe the means for monitoring continued compliance with terms of the certification.

(9) To notify all affected agencies of the filing of a notice of intent within 15 days after receipt of the notice.

(10) To issue, with the nuclear power plant certification, any license required pursuant to any federally delegated or approved permit program.

Section 5. Applicability and certification.--

(1) The provisions of this act shall apply exclusively to any nuclear power plant as defined in this act and to any expansion in steam-generating capacity of any existing nuclear power plant. No construction of any new nuclear power plant or expansion in steam-generating capacity of any existing nuclear power plant may be undertaken after the effective date of this act without first obtaining certification as provided in this act. Except as otherwise provided in this subsection, this act shall not apply to any such nuclear power plant that is presently operating or that has, upon the effective date of this act, applied for a permit or certification under requirements in force prior to the effective date of such act.

(2) Except as provided in the certification, modification of nuclear fuels, internal-related hardware, or operating conditions not in conflict with certification, which increase the electrical output of a unit to no greater capacity than the maximum operating capacity of the existing electrical generator, shall not constitute an alteration or addition to generating capacity which requires certification pursuant to this act.

(3) The application for any related department license which is required pursuant to any federally delegated or approved permit program shall be processed within the time periods allowed by this act, in lieu of those specified in s. 120.60, Florida Statutes.

Section 6. Distribution of application; schedules.--

(1) Within 7 days after the filing of an application, the department shall provide to the applicant and the Division of Administrative Hearings the names and addresses of those affected or other agencies entitled to notice and copies of the application and any amendments.

(2) Within 7 days after the filing of an application, the department shall prepare a schedule of dates for submission of statements of issues, determination of completeness, and submittal of final reports from affected and other agencies, petition for a certification hearing, and other significant dates to be followed during the certification process, including dates for filing notices of appearance to be a party pursuant to section 12(3)(c). The schedule shall establish the date for conduct of any certification hearing as provided for in this act. This schedule shall be timely provided by the department to

the applicant, the administrative law judge, all agencies identified pursuant to subsection (1), and all parties.

(3) Within 7 days after the department issues the names and addresses of those affected or other agencies entitled to notice and copies of the application and any amendments, the applicant shall distribute copies of the application to all agencies identified by the department. Copies of changes and amendments to the application shall be timely distributed by the applicant to all affected agencies and parties.

Section 7. Appointment of administrative law judge.--Within 7 days after receipt of an application, the department shall request the Division of Administrative Hearings to designate an administrative law judge to conduct the hearings required by this act. The division director shall designate an administrative law judge within 7 days after receipt of the request from the department.

Section 8. Determination of completeness.--

(1) Within 45 days after the distribution of the application or amendment to a pending application, the department shall file a statement with the Division of Administrative Hearings and with the applicant declaring its position with regard to the completeness of the application or amendment. The department's statement shall be based upon consultation with the affected agencies, which shall submit to the department recommendations on the completeness of the application within 30 days after distribution of the application.

(2) If the department declares the application or amendment incomplete, the applicant may withdraw the application or amendment. If the applicant declines to withdraw the application or amendment, the applicant may, at its option:

(a) Within 40 days after the department filed its statement of incompleteness or such later date as authorized by department rules, file additional information necessary to make the application or amendment complete. If the applicant makes its application or amendment complete within this time period, the time schedules under this act shall not be tolled by the department's statement of incompleteness.

(b) Advise the department and the administrative law judge that the information necessary to make the application or amendment complete cannot be supplied within the time period authorized in paragraph (a). The time schedules under this act shall be tolled from the date of the notice of incompleteness until the application or amendment is determined complete.

(c) Contest the statement of incompleteness by filing a request for a hearing with the administrative law judge within 15 days after the filing of the statement of incompleteness. If a hearing is requested by the applicant, all time schedules under this act shall be tolled as of the department's statement of incompleteness, pending the administrative law judge's decision concerning the dispute. A hearing shall be held no later than 21 days after the filing of the statement by the department, and a final decision shall be rendered by the administrative law judge within 10 days after the hearing.

(3)(a) If the administrative law judge determines, contrary to the department, that an application or amendment is complete, all time schedules under this act shall resume as of the date of the administrative law judge's determination.

(b) If the administrative law judge agrees that the application is incomplete, all time schedules under this act shall remain tolled until the applicant files additional information and the application or amendment is determined complete by the department or the administrative law judge.

(4) If, within 30 days after receipt of the additional information submitted pursuant to paragraph (2)(a), paragraph (2)(b), or paragraph (3)(b), based upon the recommendations of the affected agencies, the department determines that the additional information supplied by an applicant does not render the application or amendment complete, the applicant may exercise any of the options specified in subsection (2) as often as may be necessary to resolve the dispute.

Section 9. Land use and zoning consistency.--

(1) The applicant shall include in the application a statement on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances which were in effect on the date the application was filed, and a full description of such consistency.

(2) Within 80 days after the filing of the application, each local government shall file a determination with the department, applicant, administrative law judge, and all parties on the consistency of the site or any directly associated facilities with existing land use plans and zoning ordinances

which were in effect on the date the application was filed, based on the information provided in the application. The applicant shall publish notice of the consistency determination in accordance with the requirements of section 17(1)(b).

(3) If any substantially affected person wishes to dispute the local government's determination, he or she shall file a petition with the department within 15 days after the publication of notice of the local government's determination. If a hearing is requested, the provisions of s. 403.508(1), Florida Statutes, shall apply.

(4) The dates in this section may be altered upon agreement between the applicant, the local government, and the department pursuant to s. 403.5095, Florida Statutes.

(5) If it is determined by the local government that the proposed site or directly associated facility conforms with existing land use plans and zoning ordinances in effect as of the date of the application and no petition has been filed, the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

Section 10. Preliminary statements of issues, reports, and studies.--

(1) Each affected agency identified in paragraph (2)(a) shall submit a preliminary statement of issues to the department and the applicant no later than 45 days after the distribution of the application. The failure to raise an issue in this

statement shall not preclude the issue from being raised in the agency's report.

(2)(a) The following agencies shall prepare reports as provided below and shall submit them to the department and the applicant within 60 days after the application is determined complete:

1. The Department of Community Affairs shall prepare a report containing recommendations which address the impact upon the public of the proposed nuclear power plant, based on the degree to which the nuclear power plant is consistent with the applicable portions of the state comprehensive plan and other such matters within its jurisdiction.

2. The Public Service Commission shall prepare a report as to the present and future need for the electrical generating capacity to be supplied by the proposed nuclear power plant. The report shall include the commission's determination pursuant to section 25(4) and may include the commission's comments with respect to any other matters within its jurisdiction.

3. The water management district shall prepare a report as to matters within its regulatory jurisdiction.

4. Each local government in whose jurisdiction the proposed nuclear power plant, including associated facilities and associated transmission lines, is to be located shall prepare a report as to the consistency of the proposed nuclear power plant with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed nuclear power plant, including adopted local comprehensive plans, land development regulations, and any applicable local environmental

regulations adopted pursuant to s. 403.182, Florida Statutes, or by other means. Each local government in which the nuclear power generating facility is to be located shall also report on whether the proposed site for a nuclear power generating facility is located in a future land use category and a zoning district, as adopted by the local government and which were in effect on the date upon which the application was filed, which permits the location of a nuclear power generating facility. If the proposed site for a nuclear power generating facility is not located in a future land use category or zoning district which allows such use, then the local government shall identify the future land use category or zoning district which would be required to allow the proposed nuclear power generating facility on the proposed site. If the proposed site for a nuclear power generating facility is not located in a future land use category or zoning district which allows such use, the local government shall identify in its report any reasonable and available methods which the local government believes are necessary to make the proposed use of the site for a nuclear power generating facility consistent with the local comprehensive plan future land use category, in compliance with the local zoning code or compatible with the existing land uses surrounding the proposed nuclear power generating facility site.

5. The Fish and Wildlife Conservation Commission shall prepare a report as to matters within its jurisdiction.

6. The regional planning council shall prepare a report containing recommendations that address the impact upon the public of the proposed nuclear power plant, as identified under

the applicable provisions of the strategic regional policy plan adopted pursuant to chapter 186, Florida Statutes.

7. The Department of Health shall prepare a report as to matters within its jurisdiction.

8. The Department of Transportation shall prepare a report as to the impact of the proposed nuclear power plant and associated linear facilities on roads, railroads, airports, aeronautics, seaports, and other matters within its jurisdiction.

9. Any other agency, if requested by the department and upon approval of the assigned administrative law judge, shall also perform studies or prepare reports as to matters within that agency's jurisdiction which may be directly affected by the proposed nuclear power plant.

(b) Each report described in this subsection shall contain all information on variances, exemptions, exceptions, or other relief which may be required and any proposed conditions of certification on matters within the jurisdiction of such agency. For each condition proposed by an agency in its report, the agency shall list the specific statute, rule, or ordinance which authorizes the proposed condition. No condition of certification may be imposed upon a nuclear power plant project that is not directly required to ensure compliance with a specific statute, rule, or ordinance of an agency or the criteria set forth in this act.

(c) The agencies shall initiate the activities required by this section no later than 30 days after the complete application is distributed.

(3) The department shall prepare a written analysis, which shall be filed with the designated administrative law judge and served on all parties no later than 85 days after the application is found complete, but no later than 60 days prior to the scheduled date for the certification hearing if a petition for hearing were filed, and which shall include:

(a) A statement indicating whether the proposed nuclear power plant and proposed ultimate site capacity will be in compliance with the rules of the department and in compliance with a specific statute, rule, or ordinance of an agency identified in that agency's report.

(b) Copies of the studies and reports required by this act.

(c) The comments received by the department from any other agency or person.

(d) The recommendation of the department as to the disposition of the application, variances, exemptions, exceptions, or other relief identified by any party, and of any proposed conditions of certification which the department believes should be imposed, including any conditions proposed by an agency which the department believes should be imposed in any final certification.

(e) The recommendation of the department regarding the issuance of any license required pursuant to a federally delegated or approved permit program.

(4) Except when good cause is shown, the failure of any agency to submit a preliminary statement of issues or a report, or to submit its preliminary statement of issues or report

within the allowed time, shall not be grounds for the alteration of any time limitation in this act. Neither the failure to submit a preliminary statement of issues or a report nor the inadequacy of the preliminary statement of issues or report shall be grounds to deny or condition certification.

Section 11. Notice of department recommendation, petition for certification hearing.--

(1) The department and the applicant shall publish a public notice as provided for in this section, announcing the issuance of the department's recommendation on the application for site certification. The notice shall be published in the newspaper or newspapers in the jurisdictions where the proposed nuclear power plant and any associated facility are proposed to be located. The notice shall inform the public of the issuance of the department's report, the conclusion reached in that report, and the locations where the department's report and the application are available for public inspection.

(2) Within 14 days after its receipt of the department's recommendation or within 14 days after the newspaper notice of the department's recommendation, whichever occurs first, any party or any person whose substantial interests may be affected by the proposed nuclear power plant may file with the department a petition for a site certification hearing. The petition shall identify the person filing the petition, identify the substantial interests alleged to be affected, and identify with specificity those issues which the person alleges require the conduct of a certification hearing on the proposed nuclear power plant.

(3) Failure to timely file a petition for a certification hearing shall result in the department's recommendation becoming final and no longer subject to challenge or reversal in any proceeding, including proceedings before the board. Only those conditions contained in the department's recommendation may be imposed upon the proposed nuclear power plant.

Section 12. Land use and certification hearings, parties, participants.--

(1)(a) If a petition for a hearing on land use has been filed pursuant to section 9(3), the designated administrative law judge shall conduct a land use hearing in the county of the proposed site or directly associated facility, as applicable, as expeditiously as possible, but not later than 30 days after the department's receipt of the petition. The place of such hearing shall be as close as possible to the proposed site or directly associated facility. If a petition is filed, the hearing shall be held regardless of the status of the completeness of the application. However, incompleteness of information necessary for a local government to evaluate an application may be claimed by the local government as cause for a statement of inconsistency with existing land use plans and zoning ordinances under the Florida Electrical Power Plant Siting Act.

(b) Notice of the land use hearing shall be published in accordance with the requirements of section 17.

(c) The sole issue for determination at the land use hearing shall be whether or not the proposed site is consistent and in compliance with existing land use plans and zoning ordinances. If the administrative law judge concludes that the

proposed site is not consistent or in compliance with existing land use plans and zoning ordinances, the administrative law judge shall receive at the hearing evidence on, and address in the recommended order any changes to or approvals or variances of, the applicable land use plans or zoning ordinances which will render the proposed site consistent and in compliance with the local land use plans and zoning ordinances.

(d) The designated administrative law judge's recommended order shall be issued within 30 days after completion of the hearing and shall be reviewed by the board within 60 days after receipt of the recommended order by the board.

(e) If it is determined by the board that the proposed site does conform with existing land use plans and zoning ordinances in effect as of the date of the application, or as otherwise provided by this act the responsible zoning or planning authority shall not thereafter change such land use plans or zoning ordinances so as to foreclose construction and operation of the proposed power plant on the proposed site or directly associated facilities unless certification is subsequently denied or withdrawn.

(f) If it is determined by the board that the proposed site does not conform with existing land use plans and zoning ordinances, the board may, if it determines after notice and hearing and upon consideration of the recommended order on land use and zoning issues that it is in the public interest to authorize the use of the land as a site for an electrical power plant, authorize an amendment to, or a rezoning, variance, or other approval of, the adopted land use plan and zoning

ordinances required to render the proposed site consistent with local land use plans and zoning ordinances. The board's action shall not be controlled by any other procedural requirements of law. In the event a variance or other approval is denied by the board, it shall be the responsibility of the applicant to make the necessary application to the applicable local government for any approvals determined by the board as required to make the proposed site consistent and in compliance with local land use plans and zoning ordinances. No further action may be taken on the complete application until the proposed site conforms to the adopted land use plan or zoning ordinances or the board grants relief as provided under this act.

(2) If any party or person whose substantial interests are affected files a petition for a certification hearing within 14 days after publication of notice of the department's notice of its recommendation on the application for site certification, a certification hearing shall be held by the designated administrative law judge no later than 260 days from the date the application is filed with the department. However, an affirmative determination of need by the Public Service Commission pursuant to this act shall be a condition precedent to the conduct of the certification hearing. If a timely petition for a certification hearing is filed, the certification hearing shall be held at a location in proximity to the proposed site. The certification hearing shall also constitute the sole hearing allowed by chapter 120, Florida Statutes, to determine the substantial interest of a party regarding any required agency license or any related permit required pursuant to any

federally delegated or approved permit program. At the conclusion of the certification hearing, the designated administrative law judge shall, after consideration of all evidence of record, submit to the board a recommended order no later than 60 days after the date of the filing of the hearing transcript. In the event the administrative law judge fails to issue a recommended order within 60 days after the date of the filing of the hearing transcript, the administrative law judge shall submit a report to the board with a copy to all parties within 60 days after the date of the filing of the hearing transcript to advise the board of the reason for the delay in the issuance of the recommended order and of the date by which the recommended order will be issued.

(3)(a) Parties to the proceeding shall include:

1. The applicant.

2. The Public Service Commission.

3. The Department of Community Affairs.

4. The Fish and Wildlife Conservation Commission.

5. The Department of Transportation.

6. The water management district.

7. The department.

8. The regional planning council.

9. The local government.

(b) Any party listed in paragraph (a) other than the department or the applicant may waive its right to participate in these proceedings. If such listed party fails to file a notice of its intent to be a party on or before the 90th day

prior to the scheduled date for the certification hearing, such party shall be deemed to have waived its right to be a party.

(c) Upon the filing of a notice of intent to be a party with the administrative law judge and no more than 21 days after the date of publication of notice of filing of the application for site certification, the following shall also be parties to the proceeding:

1. Any agency not listed in paragraph (a) as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or natural beauty; protect the environment, personal health, or other biological values; preserve historical sites; promote consumer interests; represent labor, commercial, or industrial groups; or promote comprehensive planning or orderly development of the area in which the proposed nuclear power plant is to be located.

(d) Notwithstanding paragraph (e), failure of an agency to file a notice of intent to be a party within the time provided in this section shall constitute a waiver of the right of the agency to participate as a party in the proceeding.

(e) Other parties may include any person, including those persons enumerated in paragraph (c) who have failed to timely file a notice of intent to be a party, whose substantial interests are affected and being determined by the proceeding, and who timely file a motion to intervene pursuant to chapter 120, Florida Statutes, and applicable rules. Late intervention pursuant to this paragraph may be granted by the designated administrative law judge upon a showing of good cause that

excuses such late intervention and upon such conditions as he or she may prescribe any time prior to 30 days before the commencement of the certification hearing.

(f) Any agency, including those whose properties or works are affected, shall be made a party upon the request of the department or the applicant.

(4) When appropriate, any person may be given an opportunity to present oral or written communications to the designated administrative law judge. If the designated administrative law judge proposes to consider such communications, then all parties shall be given an opportunity to cross-examine, challenge, or rebut such communications.

(5) The designated administrative law judge shall have all powers and duties granted to administrative law judges by chapter 120, Florida Statutes, this act, and the rules of the department and the Administration Commission, including the authority to resolve disputes over the completeness and sufficiency of an application for certification.

Section 13. Final disposition of application.--

(1) Within 60 days after the date of the issuance of the department's recommendation if no hearing is held, or within 60 days after the date of the receipt of the designated administrative law judge's recommended order following a certification hearing, the board shall act upon the application by written order, approving certification or denying the issuance of a certificate, in accordance with the criteria set forth in this act, and stating the reasons for issuance or denial. If no hearing has been held, the board shall enter a

final order approving the proposed nuclear power plant subject only to the conditions of certification contained in the department's recommendation.

(2) Following the holding of a certification hearing, in determining whether an application should be approved in whole, approved with modifications or conditions, or denied, the board shall consider whether, and the extent to which, the location, construction, and operation of the proposed nuclear power plant will:

(a) Meet the electrical energy needs of the state in an orderly and timely fashion, as determined by the Public Service Commission.

(b) Comply with nonprocedural requirements of agencies.

(c) Be consistent with applicable local government comprehensive plans and in compliance with applicable zoning ordinances.

(d) Effect a reasonable balance between the need for the nuclear power plant as a means of providing abundant low-cost electrical energy and the impact upon the public and the environment resulting from the location, construction, and operation of the proposed nuclear power plant.

(3) Following the conduct of a certification hearing, if the certificate is denied, the board shall set forth in writing the actions the applicant would have to take to secure the board's approval of the application.

(4) The issues that may be raised in any hearing before the board shall be limited to those matters raised in the certification hearing before the administrative law judge or

raised in the recommended order. Only parties may appear before the board and shall be subject to the provisions of s. 120.66, Florida Statutes.

(5) In regard to the properties and works of any agency which is a party to the certification hearing, the board shall have the authority to decide issues relating to the use, the connection thereto, or the crossing thereof, for the nuclear power plant and site and to direct any such agency to execute, within 30 days after the entry of certification, the necessary license or easement for such use, connection, or crossing, subject only to the conditions set forth in such certification.

Section 14. Alteration of time limits.--Any time limitation in this act may be altered by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice or for good cause shown by any party.

Section 15. Superseded laws, regulations, and certification power.--

(1) If any provision of this act is in conflict with any other provision, limitation, or restriction under any law, rule, regulation, or ordinance of this state or any political subdivision, municipality, or agency, this act shall govern and control, and such law, rule, regulation, or ordinance shall be deemed superseded for the purposes of this act.

(2) The state hereby preempts the siting, regulation, and certification of nuclear power plant sites and nuclear power plants as defined in this act.

(3) The board may adopt reasonable procedural rules pursuant to ss. 120.536(1) and 120.54 to carry out its duties under this act and to give effect to the legislative intent that this act is to provide an efficient, simplified, centrally coordinated, one-stop licensing process.

Section 16. Effect of certification.--

(1) Subject to the conditions set forth in the certification, any certification signed by the Governor shall constitute the sole license of the state and any agency as to the approval of the site and the construction and operation of the proposed nuclear power plant, except for the issuance of department licenses required under any federally delegated or approved permit program and except as otherwise provided in subsection (4).

(2)(a) The certification shall authorize the applicant named in the certification to construct and operate the proposed nuclear power plant, subject only to the conditions of certification set forth in the certification, and except for the issuance of department licenses or permits required under any federally delegated or approved permit program.

(b) Except as provided in subsection (4), the certification may include conditions that constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use or zoning approvals which affect the proposed power plant or its site unless waived by the agency as provided below and which

otherwise would be applicable to the construction and operation of the proposed nuclear power plant. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, and Outstanding National Resource Waters and Outstanding Florida Waters, or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule, or upon a finding by the board that certifying the nuclear power plant at the site proposed by the applicant overrides the public interest protected by the statute or rule from which relief is sought. Each party shall notify the applicant and other parties no more than 60 days after the application is determined sufficient of any nonprocedural requirements not specifically listed in the application from which a variance, exemption, exception, or other relief is necessary in order for the board to certify any nuclear power plant proposed for certification. Failure of such notification by an agency shall be treated as a waiver from nonprocedural requirements of the department or any other agency. However, no variance shall be granted from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

(c) To the extent any condition of certification imposed pursuant to this act is inconsistent with or otherwise in conflict with any requirement of federal law, regulation, or license regulating construction and operation of a nuclear power plant certified under this act, then such condition of certification shall be automatically modified to conform to such

federal requirement or be superseded by such federal requirement. The state shall not enforce compliance with any such federal requirement under this act, except to the extent the state is authorized to enforce such condition under federal law.

(3) The certification and any order on land use and zoning issued under this act shall be in lieu of any license, permit, certificate, or similar document required by any agency pursuant to, but not limited to, chapter 125, chapter 161, chapter 163, chapter 166, chapter 186, chapter 253, chapter 298, chapter 370, chapter 373, chapter 376, chapter 380, chapter 381, chapter 387, chapter 403, except for permits issued pursuant to s. 403.0885, Florida Statutes, and except as provided in s. 403.509(3) and (6), Florida Statutes, chapter 404, Florida Statutes, the Florida Transportation Code, or 33 U.S.C. s. 1341.

(4) This act shall not affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes, provided that in the event of a conflict between requirements of local building construction codes and federal requirements, such federal requirements shall supersede local building construction codes.

(5)(a) A nuclear power plant certified pursuant to this act shall comply with rules adopted by the department subsequent to the issuance of the certification which prescribe new or stricter criteria, to the extent that the rules are applicable to nuclear power plants. Except when express variances, exceptions, exemptions, or other relief have been granted,

subsequently adopted rules which prescribe new or stricter criteria shall operate as automatic modifications to certifications. A holder of a certification issued under this act may apply to the board for relief from such rules to the extent relief is available to other electrical power plants in the state. Any such relief shall be granted in the same manner as provided for the granting of relief at the time of the original certification, as provided for in this act.

(b) Upon written notification to the department, any holder of a certification issued pursuant to this act may choose to operate the certified nuclear power plant in compliance with any rule subsequently adopted by the department which prescribes criteria more lenient than the criteria required by the terms and conditions in the certification which are not site-specific.

(c) No term or condition of certification shall be interpreted to preclude the postcertification exercise by any party of whatever procedural rights it may have under chapter 120, Florida Statutes, including those related to rulemaking proceedings.

Section 17. Notice; costs of proceeding.--

(1) The following notices are to be published by the applicant:

(a) A notice of filing of the application, which shall be published as specified in subsection (2) within 15 days after the application has been determined complete. Such notice shall give notice of the provisions of section 16(1) and (2).

(b) Notice of the land use determination made pursuant to section 9(1) within 15 days after the determination is filed.

(c) Notice of the land use hearing, which shall be published as specified in subsection (2), no later than 15 days before the hearing.

(d) Notice of issuance of the department's agency report and recommendation, which shall be published as specified in subsection (2) no later than 10 days after the report and recommendation are issued by the department.

(e) If a certification hearing is to be conducted, then notice published as specified in subsection (2).

(f) Notice of modification when required by the department, based on whether the requested modification of certification will significantly increase impacts to the environment or the public. Such notice shall be published as specified under subsection (2):

1. Within 21 days after receipt of a request for modification, except that the newspaper notice shall be of a size as directed by the department commensurate with the scope of the modification.

2. If a hearing is to be conducted in response to the request for modification, then notice shall be provided as specified in paragraph (e).

(g) Notice of a supplemental application, which shall be published as follows:

1. Notice of receipt of the supplemental application shall be published as specified in paragraph (a).

2. Notice of the certification hearing shall be published as specified in paragraph (f).

(2) Notices provided by the applicant shall be published in newspapers of general circulation within the county or counties in which the proposed nuclear power plant will be located. The newspaper notices shall be at least one-half page in size in a standard size newspaper or a full page in a tabloid size newspaper and published in a section of the newspaper other than the legal notices section. These notices shall include a map generally depicting the project and all associated facilities corridors, including associated transmission lines, if any. A newspaper of general circulation shall be the newspaper which has the largest daily circulation in that county and has its principal office in that county. If the newspaper with the largest daily circulation has its principal office outside the county, the notices shall appear in both the newspaper having the largest circulation in that county and in a newspaper authorized to publish legal notices in that county.

(3) All notices published by the applicant shall be paid for by the applicant and shall be in addition to the application fee.

(4) The department shall:

(a) Publish in the manner specified in chapter 120, Florida Statutes, notices of the filing of the application or supplemental application; the land use determination and land use hearing, if one is to be held; the department's report and recommendation; the certification hearing, if one is to be held; the hearing before the board; and stipulations, proposed agency action, or petitions for modification.

(b) Provide copies of those notices to any persons who have requested to be placed on the departmental mailing list for the purposes provided in paragraph (a).

(5) The applicant shall pay those expenses and costs associated with the conduct of the hearings and the recording and transcription of the proceedings.

Section 18. Revocation or suspension of certification.--Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the board's refusal to recommend a certification in the first instance.

(2) For failure to comply with the terms or conditions of the certification.

(3) For violation of the provisions of this act or rules or orders issued under this act.

Section 19. Review.--Proceedings under this act shall be subject to judicial review in the Florida Supreme Court. Separate appeals of the certification order issued by the board and of any department permit issued pursuant to a federally delegated or approved permit program shall be consolidated for purposes of judicial review. Review on appeal shall be based solely on the record before the board and briefs to the court and shall be limited to determining whether the certification order conforms to the constitution and laws of this state and the United States and is within the authority of the board under this act. The Supreme Court shall proceed to hear and determine

the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

Section 20. Enforcement of compliance.--Failure to obtain a certification or to comply with the conditions of certification or this act shall constitute a violation of chapter 403, Florida Statutes.

Section 21. Availability of information.--The department shall make available for public inspection and copying during regular office hours, at the expense of any person requesting copies, any information filed or submitted to the department pursuant to this act.

Section 22. Modification of certification.--

(1) A certification may be modified after issuance in any one of the following ways:

(a) The board may delegate to the department the authority to modify specific conditions in the certification.

(b) The department may modify the terms and conditions of the certification if no party to the certification hearing objects in writing to such modification within 45 days after notice by mail to such party's last address of record and if no other person whose substantial interests will be affected by the modification objects in writing within 30 days after issuance of public notice. If objections are raised, the applicant may file a petition for modification pursuant to paragraph (c).

(c) Any petition for modification shall be filed with the department and the Division of Administrative Hearings. A

petition for modification may be filed by the applicant or the department setting forth:

1. The proposed modification.

2. The factual reasons asserted for the modification.

3. The anticipated effects of the proposed modification on the applicant, the public, and the environment.

(2) Petitions filed pursuant to this section shall be disposed of in the same manner as an application, but with time periods established by the administrative law judge commensurate with the significance of the modification requested.

(3) Any agreement or modification under this section must be in accordance with the terms of this act. No modification to a certification shall be granted that constitutes a variance from standards or regulations of the department applicable under any federally delegated or approved permit program, except as expressly allowed in such program.

Section 23. Supplemental applications for sites certified for ultimate site capacity.--

(1)(a) The department shall adopt rules governing the processing of supplemental applications for certification of the construction and operation of nuclear power plants to be located at sites which have been previously certified for an ultimate site capacity pursuant to this act. Supplemental applications shall be limited to nuclear power plants using the fuel type previously certified for that site. The rules adopted pursuant to this section shall include provisions for:

1. Prompt appointment of a designated administrative law judge.

2. The contents of the supplemental application.

3. Resolution of disputes as to the completeness and sufficiency of supplemental applications by the designated administrative law judge.

4. Public notice of the filing of the supplemental applications.

5. Time limits for prompt processing of supplemental applications.

6. Final disposition by the board within 215 days after the filing of a complete supplemental application.

(b) The time limits shall not exceed any time limitation governing the review of initial applications for site certification pursuant to this act, it being the legislative intent to provide shorter time limitations for the processing of supplemental applications for nuclear power plants to be constructed and operated at sites which have been previously certified for an ultimate site capacity.

(c) Any time limitation in this section or in rules adopted pursuant to this section may be altered by the designated administrative law judge upon stipulation between the department and the applicant, unless objected to by any party within 5 days after notice or for good cause shown by any party. The parties to the proceeding shall adhere to the provisions of chapter 120, Florida Statutes, and this act in considering and processing such supplemental applications.

(2) Supplemental applications shall be reviewed as provided in this act, except that the time limits provided in this section shall apply to such supplemental applications.

(3) The land use and zoning consistency determination provisions of the Florida Electrical Power Plant Siting Act shall not be applicable to the processing of supplemental applications pursuant to this section so long as:

(a) The previously certified ultimate site capacity is not exceeded.

(b) The lands required for the construction or operation of the electrical power plant which is the subject of the supplemental application are within the boundaries of the previously certified site.

(4) For the purposes of this act, the term "ultimate site capacity" means the maximum generating capacity for a site as certified by the board.

Section 24. Fees; disposition.--The department shall charge the applicant the following fees, as appropriate, which shall be paid into the Florida Permit Fee Trust Fund:

(1) An application fee, which shall not exceed $200,000. The fee shall be fixed by rule on a sliding scale related to the size, type, ultimate site capacity, increase in generating capacity proposed by the application, or the number and size of local governments in whose jurisdiction the nuclear power plant is located.

(a) Sixty percent of the fee shall go to the department to cover any costs associated with reviewing and acting upon the application, to cover any field services associated with monitoring construction and operation of the facility, and to cover the costs of the public notices published by the department.

(b) Twenty percent of the fee or $25,000, whichever is greater, shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services.

(c) Upon written request with proper itemized accounting within 90 days after final agency action by the board or withdrawal of the application, the department shall reimburse the Department of Community Affairs, the Fish and Wildlife Conservation Commission, any water management district created pursuant to chapter 373, Florida Statutes, the regional planning council, and the local government in the jurisdiction of which the proposed nuclear power plant is to be located, and any other agency from which the department requests special studies pursuant to this act. Such reimbursement shall be authorized for the preparation of any studies required of the agencies by this act, for agency travel and per diem to attend any hearing held pursuant to this act, and for local governments to participate in the proceedings. In the event the amount available for allocation is insufficient to provide for complete reimbursement to the agencies, reimbursement shall be on a prorated basis.

(d) If any sums are remaining, the department shall retain them for its use in the same manner as is otherwise authorized by this act; provided, however, that if the certification application is withdrawn, the remaining sums shall be refunded to the applicant within 90 days after withdrawal.

(2) A certification modification fee, which shall not exceed $30,000. The fee shall be submitted to the department with a formal petition for modification to the department. This

fee shall be established, disbursed, and processed in the same manner as the application fee in subsection (1), except that the Division of Administrative Hearings shall not receive a portion of the fee unless the petition for certification modification is referred to the Division of Administrative Hearings for hearing. If the petition is so referred, only $10,000 of the fee shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services. The fee for a modification by agreement shall be $10,000, to be paid upon the filing of the request for modification. Any sums remaining after payment of authorized costs shall be refunded to the applicant within 90 days after issuance or denial of the modification or withdrawal of the request for modification.

(3) A supplemental application fee, not to exceed $75,000, to cover all reasonable expenses and costs of the review, processing, and proceedings of a supplemental application. This fee shall be established, disbursed, and processed in the same manner as the certification application fee in subsection (1) except that only $20,000 of the fee shall be transferred to the Administrative Trust Fund of the Division of Administrative Hearings of the Department of Management Services.

Section 25. Exclusive forum for determination of need.--

(1) On request by an applicant, the Public Service Commission shall begin a proceeding to determine the need for a nuclear power plant subject to this act. The applicant shall publish a notice of the proceeding in a newspaper of general circulation in each county in which the proposed nuclear power

plant will be located. The notice shall be at least one-quarter of a page and published at least 21 days prior to the scheduled date for the proceeding.

(2)(a) The commission shall hold a hearing within 90 days after the filing of the petition and shall issue an order granting or denying the petition to determine need within 135 days after the date of the filing of the petition. The commission shall be the sole forum for the determination of this matter and the issues addressed in the petition, which accordingly shall not be reviewed in any other forum. In making its determination to either grant or deny a petition for determination of need, the commission shall consider the need for electric system reliability and integrity, including fuel diversity, the need for base-load generating capacity, and the need for adequate electricity at a reasonable cost.

(b) The applicant's petition shall include:

1. A description of the need for the generation capacity.

2. A description of how the proposed nuclear power plant will enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. A description of and a nonbinding estimate for the cost of the nuclear power plant.

4. The annualized base revenue requirement for the first 12 months of operation of the nuclear power plant.

(c) In making its determination, the commission shall take into account matters within its jurisdiction, which it deems relevant, including whether the nuclear power plant will:

1. Provide needed base-load capacity.

2. Enhance the reliability of electric power production within the state by improving the balance of power plant fuel diversity and reducing Florida's dependence on fuel oil and natural gas.

3. Provide the most cost-effective source of power, taking into account the need to improve the balance of fuel diversity, reduce Florida's dependence on fuel oil and natural gas, reduce air-emission compliance costs, and contribute to the long-term stability and reliability of the electric grid.

(3) No provision of rule 25-22.082, Florida Administrative Code, shall be applicable to a nuclear power plant sited under this act, including provisions for cost recovery, and an applicant shall not otherwise be required to secure competitive proposals for power supply prior to making application under this act or receiving a determination of need from the commission.

(4) The commission's determination of need for a nuclear power plant shall create a presumption of public need and necessity and shall serve as the commission's report. An order entered pursuant to this section constitutes final agency action. Any petition for reconsideration of a final order on a petition for need determination shall be filed within 5 days after the date of such order. The commission's final order, including any order on reconsideration, shall be reviewable on appeal in the Florida Supreme Court. Inasmuch as delay in the determination of need will delay siting of a nuclear power plant or diminish the opportunity for savings to customers under the

federal Energy Policy Act of 2005, the Supreme Court shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over matters not accorded similar precedence by law.

(5) After a petition for determination of need has been granted, the right of a utility to recover any costs incurred prior to commercial operation, including, but not limited to, costs associated with the siting, design, licensing, or construction of the plant, shall not be subject to challenge unless and only to the extent the commission finds, based on a preponderance of the evidence adduced at a hearing before the commission under s. 120.57, Florida Statutes, that certain costs were imprudently incurred. Proceeding with the construction of the nuclear power plant following an order by the commission approving the need for the nuclear power plant under this act shall not constitute or be evidence of imprudence. Evidence of imprudence shall not include any cost increases due to events beyond the utility's control. Further, a utility's right to recover costs associated with a nuclear power plant may not be raised in any other forum or in the review of proceedings in such other forum. Costs incurred prior to commercial operation shall be recovered pursuant to chapter 366, Florida Statutes.

Section 26. Section 366.93, Florida Statutes, is created to read:

366.93 Cost recovery for the siting, design, licensing, and construction of nuclear power plants.--

(1) As used in this section, the term:

(a) "Cost" includes, but is not limited to, all capital investments, including rate of return, any applicable taxes, and all expenses, including operation and maintenance expenses, related to or resulting from the siting, licensing, design, construction, or operation of the nuclear power plant.

(b) "Electric utility" or "utility" has the same meaning as that provided in s. 366.8255(1)(a).

(c) "Nuclear power plant" or "plant" has the same meaning as that provided in the Florida Energy Diversity and Efficiency Act.

(d) "Preconstruction" is that period of time after a site has been selected, including the date the utility begins site clearing work. Preconstruction costs shall be afforded deferred accounting treatment and shall accrue a carrying charge equal to the utility's allowance for funds used during construction (AFUDC) rate until recovered in rates.

(2) Within 6 months after the effective date of this act, the commission shall establish, by rule, alternative cost recovery mechanisms for the recovery of costs incurred in the siting, design, licensing, and construction of nuclear power plants. Such mechanisms shall be designed to promote utility investment in nuclear plants and allow for the recovery in rates all prudently incurred costs, and shall include, but are not limited to:

(a) Recovery through the capacity cost recovery clause of any preconstruction costs.

(b) Recovery through an incremental increase in the utility's capacity cost recovery clause rates of the carrying

costs on the utility's projected construction cost balance associated with the nuclear power plant. To encourage investment and provide certainty, for nuclear power plant need petitions submitted on or before December 31, 2010, associated carrying costs shall be equal to the pretax AFUDC rate in effect upon this act becoming law. For nuclear power plants for which need petitions are submitted after December 31, 2010, the utility's existing pretax AFUDC rate is presumed to be appropriate unless determined otherwise by the commission in the determination of need for the nuclear power plant.

(3) After a petition for determination of need is granted, a utility may petition the commission for cost recovery as permitted by this section and commission rules.

(4) When the nuclear power plant is placed in commercial service, the utility shall be allowed to increase its base rate charges by the projected annual revenue requirements of the nuclear power plant based on the jurisdictional annual revenue requirements of the plant for the first 12 months of operation. The rate of return on capital investments shall be calculated using the utility's rate of return last approved by the commission prior to the commercial inservice date of the nuclear power plant. If any existing generating plant is retired as a result of operation of the nuclear power plant, the commission shall allow for the recovery, through an increase in base rate charges, of the net book value of the retired plant over a period not to exceed 5 years.

(5) The utility shall report to the commission annually the budgeted and actual costs as compared to the estimated

inservice cost of the nuclear power plant provided by the utility pursuant to section 25(2)(b) until the commercial operation of the nuclear power plant. The utility shall provide such information on an annual basis following the final order by the commission approving the determination of need for the nuclear power plant, with the understanding that some costs may be higher than estimated and other costs may be lower.

(6) In the event the utility elects not to complete or is precluded from completing construction of the nuclear power plant, the utility shall be allowed to recover all prudent preconstruction and construction costs incurred following the commission's issuance of a final order granting a determination of need for the nuclear power plant. The utility shall recover such costs through the capacity cost recovery clause over a period equal to the period during which the costs were incurred or 5 years, whichever is greater. The unrecovered balance during the recovery period will accrue interest at the utility's weighted average cost of capital as reported in the commission's earnings surveillance reporting requirement for the prior year.

Section 27. This act shall take effect upon becoming law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1245 North Broward Hospital District, Broward County
SPONSOR(S): Sobel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	DiVagno	Hamby
2) Fiscal Council		Monroe KDM	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

The North Broward Hospital District (District) is an independent special tax district with the public purpose of providing for the health care needs of the people of the District. The District was created under ch. 27438 (1951), L.O.F., and amended by subsequent acts. The District has the authority to collect ad valorem taxes at a rate not to exceed 2.5 mills and is governed by a seven member Board of Commissioners (Board) appointed by the Governor.

This bill codifies, or reenacts, all prior special acts of the District into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority or superseding the authority of any entity pursuant to law. Neither is reenactment to be construed as modifying, amending, or altering covenants, contracts, or other obligations of the District with respect to bond indebtedness. The bill codifies the provisions of the charter with editorial and organizational changes, except as follows:

- The training school for nurses must be in accordance with state laws and regulations.
- The bonding powers are significantly revised.
- Provides for an additional method of compromising and settling accounts receivable or other claims for money due and owed to the District.
- Provides that each hospital or clinic established under the act be for the use and benefit of the residents of the District, and that such residents be admitted and entitled to hospitalization subject to the rules and regulations provided by the Board effective on the date of admission of the patient. The hospital and clinic may also provide care and treatment, without charge, for patients found to be indigent by the Board. However, the Board may still collect from patients financially able to pay such chargers established by the Board. Additionally, the Board is allowed to exclude any person having a communicable or contagious disease where there may be detriment to the best interests of the hospital, unless the hospital has a separate ward or building for the special treatment of such patients. The Board may also extend privileges and use of the District's hospitals and clinics to non-residents, though residents of the District have first claim to admission.
- Confidentiality of the quasi-judicial functions of the Board is amended to be confidential only as provided by law.

This bill would take effect upon becoming law.

No fiscal impact is expected for FY 2005/06 or 2006/07.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Codification

Codification is the process of bringing a special act up-to-date. After a special district is created, special acts often amend or alter the special district's charter provisions. To ascertain the current status of a special district's charter, it is necessary to research all amendments or changes made to the charter since its inception or original passage by the Legislature. Codification of special district charters is important because it allows readers to more easily determine the current charter of a district.

Codification of special district charters was initially authorized by the 1997 Legislature and is codified in s. 189.429, F.S. and s. 191.015, F.S. The 1998 Legislature subsequently amended both sections of the statute. Current law provides for codification of all special district charters by December 1, 2004. The 1998 law allows for the adoption of the codification schedule provided for in an October 3, 1997 memorandum issued by the Chair of the Committee on Community Affairs. Any codified act relating to a special district must provide for the repeal of all prior special acts of the Legislature relating to the district. Additionally, the 2001 Legislature amended s. 189.429, F.S. to provide that reenactment of existing law pursuant to s. 189.429, F.S.: (1) shall not be construed to grant additional authority nor to supersede the authority of an entity; (2) shall continue the application of exceptions to law contained in special acts reenacted pursuant to the section; (3) shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of any district with respect to bonded indebtedness; and (4) shall not be construed to affect a district's ability to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing the district's bonded indebtedness.

Since the enactment of ss. 189.429 and 191.015, F.S., 201 special districts (includes local bills that were vetoed or filed and did not pass the Legislature) have codified their charters.

Although the deadline for submission of a codified charter by all special districts was prior to the 2005 Legislative session, all special districts have not complied with this requirement, and proposed codification bills for other special districts have not been enacted by the Legislature or have been vetoed by the Governor. As a result, additional proposed codification bills are anticipated.

North Broward Hospital District:

The North Broward Hospital District (District) is an independent special tax district with the public purpose of providing for the health care needs of the people of the District. The District has the authority to collect ad valorem taxes at a rate not to exceed 2.5 mills and is governed by a seven member Board of Commissioners (Board) appointed by the Governor. The Board has all the powers of a body corporate, including the power to:

- Sue and be sued;
- Contract;
- Adopt and alter a seal;
- Acquire, purchase, hold, lease, and convey real and personal property;
- Appoint a superintendent and other such agents as deemed advisable;

- Borrow money, incur indebtedness, and issue notes, revenue certificates, bonds, and other evidence of indebtedness;
- Establish and support subsidiary or affiliate organizations to fulfill its public purpose, and to the extent permitted by the State Constitution, to support not-for-profit organizations whose purposes are to provide health care needs to the people of the District;
- Participate as a shareholder in a corporation, or as a joint venturer in a joint venture, that provides health care, or activities related to health care, and to provide equity financing for the activities of the corporation or joint venture and to utilize the assets and resources of the District to the extent not needed for heath care and related activities, to the extent permitted by the State Constitution;
- Invest "surplus funds" as provided for in ch. 218, F.S., and as allowed under s. 218.345, F.S., as amended or superseded;
- Delegate authority to invest surplus funds to a state or national banking organization acting pursuant to a written trust agreement as a trustee of the District's funds;
- Invest any funds in the District's control or possession in accordance with an investment policy, consisting of prudent investment practices, approved by the board and include specific:
    - bankers acceptances
    - commercial paper
    - interest-bearing bonds, debentures, and other such evidence of indebtedness
    - negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government
    - options as to engage in bond fide hedging activities
    - equity securities
    - contracts

The Board is authorized and empowered to establish, operate, maintain, and/or construct, when necessary:

- Hospital(s), supportive facilities, and such facilities needed to provide for limited care and treatment for the needs and use of the people in the District.
- A training school for nurses, for which the Board is empowered to set-up rules and regulations for the operation of, and to issue diplomas of completion.
- Clinics, medical training, and medical research programs in connection with the operation of the District's hospital(s).
- Projects and programs of and for medical research, education, and development affecting human physical or mental health and well being.
- Automobile facilities deemed proper and necessary for a hospital facility.

The Board has the power of eminent domain, to be exercised in the manner provided for in general law. The Board is authorized to sell real or personal property of the District only in accordance to the terms and conditions of its charter.

The Board is also authorized to incur a variety of indebtedness in the forms of bonds, notes, certificates, lease participations, guaranties, and any other form of indebtedness payable from the general revenues and other legally available funds of the District. The charter contains extensive provisions regarding the issuance of bonds and refunding bonds by the Board. The Board also has authority to declare accounts receivable uncollectible and write such accounts off, to settle any accounts receivable, and to obligate the District for the payment of hospital and nursing home expenses for patients transferred from the District's hospitals, provided such patients are deemed indigent by the District.

The Board was required to authorize and establish one medical staff for the direction and control of the practitioners and to insure performance of the necessary professional services in the hospitals and facilities operated by the District. The Board is authorized to establish rules and regulations regarding professional duties and responsibilities of the staff and is provided quasi-judicial procedures for which

membership on said staff can be granted, refused, revoked, or suspended. The charter provides confidentiality of all documents, testimony, and evidence relevant to these proceedings.

The Board is also authorized to employ professional and nonprofessional personnel necessary for the effective and lawful operation of the hospital and facilities of the District. In doing so, the Board is also authorized to establish rules and regulations to govern the operations and conduct of the District's hospitals, facilities, employees, patients, private duty nurses, guests, visitors, or any other person using the premises and facilities.

The Board is authorized and empowered to create an employees pension fund so as to provide life, disability, and medical insurance for all or any of its employees.

The charter limits the purchase of supplies, equipment, and materials used for the operation and maintenance of hospital and facilities to 1.5 mills of the total annual District revenues. All contracts for construction in excess of said amount must go through a competitive bid process, as established in the charter, before being approved.

The charter of the District also declares the District a "local agency", as defined in s. 159.27, F.S., and gives the District all the powers set forth in ch. 159, part II, F.S. Chapter 159, part II, F.S., is the Florida Industrial Development Act, and is intended to provide financing of projects meeting the legislative findings in the chapter.

The District's charter exempts the District from being declared a "public body" or "taxing authority" as provided for in ch. 163, part III, F.S., the Community Redevelopment Act of 1969.

Effect of Bill and Changes to the North Broward Hospital District's Charter:

This bill codifies, or reenacts, all prior special acts of the District into a single act, as required by s. 189.429, F.S. Reenactment of existing law is permitted by this section, although this reenactment is not to be construed as a grant of additional authority, or as superseding the authority of any entity pursuant to law. Neither is the bill entitled to modify, amend, or alter any covenants, contracts, or other obligations of the District with respect to bond indebtedness, or affect the ability of the district to levy and collect taxes, assessments, fees, or chargers for the purpose of redeeming and servicing bound indebtedness. The exclusive charter of the District is recreated by this bill.

The bill codifies the provisions of the charter with editorial and organizational changes, except as follows:

- The training school for nurses provided for in section 7 of the proposed codified charter now must be in accordance with state laws and regulations.
- The bonding powers are significantly revised, with section 10 of the proposed codified charter providing only that the District's bonds be issued or sold in a manner and at a rate or rates of interest as authorized by general law and that the bonds may be sold at par or at such premium or discount as the Board determines, in keeping with general law.
- An additional method of compromising and settling accounts receivable or other claim for money due and owed to the District is provided for in section 11 of the proposed codified charter, authorizing and empowering the Board to do such through the acceptance of promissory notes in accordance with the terms and conditions determined by the Board. However, the Board may not assign, sell, or sit over said promissory notes to commercial institutions or private collection agencies for collection.
- In authorizing the treatment of persons at the facilities of the District, section 17 of the proposed codified charter provides that each hospital or clinic established under the act be for the use and benefit of the residents of the District, and that such residents be admitted and entitle to hospitalization subject to the rules and regulations effective on the date of admission of the patient, provided by the Board. The hospital and clinic may also provide care and treatment, without

charge, for patients found to be indigent by the Board. However, the Board may still collect from patients financially able to pay, such chargers established by the Board. Additionally, the Board is allowed to exclude any person having a communicable or contagious disease where there may be detriment to the best interests of the hospital, unless the hospital has a separate ward or building for the special treatment of such patients. The Board may also extend privileges and use of the District's hospitals and clinics to non-residents, though residents of the District have first claim to admission.

- The confidentiality of the quasi-judicial functions of the Board is amended in section 18(g) of the proposed codified charter to be confidential as provided by law.

The proposed codified charter contains a severability clause, providing that if any provision of the act be invalid or unenforceable, the remaining portion shall remain valid.

C. SECTION DIRECTORY:

Section 1: Provides limits of the reenactment.

Section 2: Codifies, reenacts, amends, and repeals special laws relating to North Broward Hospital District.

Section 3: Provides for the re-created, reenacted charter of North Broward Hospital District.

Section 1: Provides boundaries.
Section 2: Provides seven subdistricts.
Section 3: Creates the board of commissioners.
Section 4: Provides powers of the board of commissioners.
Section 5: Provides rules of procedure for the board of commissioners.
Section 6: Authorizes the Board to establish and maintain health care facilities.
Section 7: Authorizes the Board to establish and maintain a training school for nurses.
Section 8: Provides the Board power of eminent domain.
Section 9: Provides for indebtedness.
Section 10: Authorizes issuance and sale of bonds by the District.
Section 11: Authorizes the Board to accept promissory notes.
Section 12: Provides for payment of funds.
Section 13: Authorizes the Board to collect property taxes and other lawful taxes to pay and provide for a fund for interest on bonds.
Section 14: Provides for the levy of property tax by resolution.
Section 15: Authorizes the Board to use funds to pay expenses.
Section 16: Requires publication of annual financial statements.
Section 17: Establishes each hospital and clinic is for the use and benefit of residents of the District.
Section 18: Provides for one medical staff for the direction and control of practitioners and authorizes the Board to establish bylaws, rules, and regulations for members of the staff. Provides for and the rules of quasi-judicial proceedings.
Section 19: Authorizes the District to provide a pension plan and insurance benefits for employees.
Section 20: Authorizes the Board to sell or lease property of the District.
Section 21: Allows donations to the District.
Section 22: Authorizes the Board to acquire property from the City of Ft. Lauderdale.
Section 23: Allows for the establishment of hospitals without the issuance of bonds.
Section 24: Provides for a competitive bid procedure and authority to negotiate contracts.
Section 25: Authorizes the Board to write off bad debts.
Section 26: Authorizes the Board to compromise and settle accounts receivable.
Section 27: Authorizes the Board to obligate the District to pay for expenses of indigent patients transferred to other hospitals or nursing homes.

Section 28: Authorizes the Board to construct parking facilities and charge fees for use.
Section 29: Authorizes the Board to establish, maintain, or participate in programs and projects for medical research, education, and development affecting mental and physical health.
Section 30: Provides the fiscal year of July 1 thru June 30.
Section 31: Declares the District a local agency under ch. 159, F.S., the Florida Industrial Development Financing Act.
Section 32: Authorizes the transfer or lease of facilities to not-for-profit corporations.
Section 33: Exempts the District from being deemed a public body or taxing authority under the Community Redevelopment Act of 1969.
Section 34: Provides for liberal construction of the charter.

Section 4: Provides for severability.
Section 5: Repeals special laws in the Laws of Florida.
Section 6: Provides an effective date of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 31, 2005.

WHERE? *Sun-Sentinel*, Broward County, Palm Beach County, and Miami-Dade County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

No fiscal impact is expected for FY 2005/06 or 2006/07.[1]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Board is authorized to establish rules and regulations to govern the operations and conduct of the District's hospitals, facilities, employees, patients, private duty nurses, guests, visitors, or any other person using the premises and facilities. The Board is also authorized to set-up rules and regulations, in accordance with state laws and regulations, for the operation of a nurses training program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[1] 2006 Economic Impact Statement, HB 1245.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating the North Broward Hospital District, Broward County; codifying, amending, reenacting, and repealing chapters 27438 (1951), 61-1931, 61-1937, 63-1192, 65-1316, 65-1319, 67-1170, 67-1171, 69-895, 69-898, 69-914, 70-622, 71-567, 71-576, 71-578, 73-411, 73-412, 73-413, 74-449, 75-347, 75-348, 76-338, 77-508, 78-481, 80-464, 80-468, 81-354, 84-399, 86-369, 87-508, 90-485, 91-351, 97-372, and 2002-363, Laws of Florida; codifying the district charter; providing severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The reenactment of existing law in this act shall not be construed as a grant of additional authority to nor to supersede the authority of any entity pursuant to law. Exceptions to law contained in any special act that are reenacted pursuant to this act shall continue to apply.

(2) The reenactment of existing law in this act shall not be construed to modify, amend, or alter any covenants, contracts, or other obligations of the district with respect to bonded indebtedness. Nothing pertaining to the reenactment of existing law in this act shall be construed to affect the ability of the district to levy and collect taxes, assessments, fees, or charges for the purpose of redeeming or servicing bonded indebtedness of the district.

Section 2. Chapters 27438 (1951), 61-1931, 61-1937, 63-1192, 65-1316, 65-1319, 67-1170, 67-1171, 69-895, 69-898, 69-914, 70-622, 71-567, 71-576, 71-578, 73-411, 73-412, 73-413, 74-449, 75-347, 75-348, 76-338, 77-508, 78-481, 80-464, 80-468, 81-354, 84-399, 86-369, 87-508, 90-485, 91-351, 97-372, and 2002-363, Laws of Florida, are codified, reenacted, amended, and repealed as provided in this act.

Section 3. The North Broward Hospital District is re-created and the charter for the district is re-created and reenacted to read:

Section 1. Created.--A special tax district is hereby created and incorporated, to be known as the "North Broward Hospital District" in Broward County, which district shall embrace and include the following described property, situate, lying, and being in Broward County:

Begin at a point where the North boundary line of Section 25, Township 50 South, Range 42 East, intersects the line of mean low tide of the Atlantic Ocean; thence run westerly along the North boundary line of Sections 25, 26, 27, 28, 29 and 30 in Township 50 South, Range 42 East, and continue westerly along the North boundary line of Sections 25, 26, 27, 28, 29 and 30 in Township 50 South, Range 41 East, to the westerly boundary of Range 41 East; thence southerly along the westerly boundary line of said Section 30 to a point of intersection with the North boundary line of Section 25, Township 50 South, Range 40 East, extended easterly; thence westerly along the North

boundary line of Section 25, Township 50 South, Range 40 East, to the northwest corner of said Section; thence southerly along the west boundary line of said Section 25 and Section 36, Township 50 South, Range 40 East, and continuing southerly along the west boundary lines of Sections 1, 12, 13, 24, 25 and 36 of Township 51 South, Range 40 East, to the southwest corner of said Section 36, the same being the south boundary line of Broward County; thence westerly along the south boundary line of Broward County to the southwest corner of said County; thence northerly along the west boundary line of Broward County, Florida, to the northwest corner of said County; thence easterly along the northern boundary line of Broward County, Florida, to a point where the north boundary line of Broward County intersects the line of mean low tide of the Atlantic Ocean; thence southerly along the mean low tide line of the Atlantic Ocean to the point of beginning, together with all areas within the corporate limits of the City of Fort Lauderdale, lying south of the south boundary line of the above-described property.

Section 2. Subdistricts.--The North Broward Hospital District shall be composed of the following subdistricts:

(1) Subdistrict No. 1 shall include the areas of Broward County from the north boundary line thereof south to a line running east and west along the boundary line between the City of Pompano Beach and the City of Lighthouse Point and extended

east and west along the section lines which comprise said boundary to intersect with the Atlantic Ocean on the east and the western boundary of Broward County on the west.

(2) Subdistrict No. 2 shall include that area of Broward County south of the south boundary line of subdistrict No. 1 to a line running east and west along the center of McNab Road and extended east and west along the section lines which bisect the right-of-way of said McNab Road to intersect with the Atlantic Ocean on the east and the western boundary of Broward County on the west.

(3) Subdistrict No. 3 shall include that area of Broward County bounded on the north by the south boundary line of subdistrict No. 2, on the south along the center of Sunrise Boulevard, on the west by a line running north and south along the center of U.S. 441 (State Road #7), and on the east by the Atlantic Ocean.

(4) Subdistrict No. 4 shall include that area of Broward County bounded on the north by the south boundary line of subdistrict No. 3, on the south by the south boundary line of the North Broward Hospital District, on the west by a line running north and south along the center of U.S. 441 (State Road #7), and on the east by the Atlantic Ocean.

(5) Subdistrict No. 5 shall include that area of Broward County bounded on the north by the south boundary line of subdistrict No. 2, on the south by the south boundary line of the North Broward Hospital District, on the west by the western boundary of Broward County, and on the east by a line running north and south along the center of U.S. 441 (State Road #7).

(6) Subdistrict No. 6 shall include that area of Broward County which comprises the entire North Broward Hospital District and shall be considered a subdistrict at large.

(7) Subdistrict No. 7 shall include that area of Broward County which comprises the entire North Broward Hospital District and shall be considered a subdistrict at large.

Section 3. Board of commissioners generally.--The governing body of the North Broward Hospital District shall consist of seven commissioners, one of whom may be a licensed practitioner of the healing arts as defined in chapter 458, Florida Statutes. All commissioners shall serve without compensation. Each subdistrict shall have one representative on the Board of Commissioners of the North Broward Hospital District who has resided in said subdistrict for more than 1 year prior to appointment. Said commissioners shall be known and designated as the Board Of Commissioners of North Broward Hospital District. Members of the board of commissioners shall be appointed by the Governor for terms of 4 years each. The Governor shall have the power to remove any member of said board of commissioners for cause and shall fill any vacancies that may at any time occur therein. Each member shall give bond to the Governor for the faithful performance of his or her duties in the sum of $5,000 with a surety company qualified to do business in the state, as surety, which bond shall be approved and kept by the Clerk of the Circuit Court of Broward County. The premiums on said bonds shall be paid as part of the expenses of said district.

Section 4. Powers of board of commissioners generally.--

(1) The Board of Commissioners of the North Broward Hospital District shall have all the powers of a body corporate, including the power to sue and be sued under the name of the North Broward Hospital District; to contract and be contracted with; to adopt and use a common seal and to alter the same at pleasure; to acquire, purchase, hold, lease as lessee or lessor, and convey such real and personal property as said board may deem proper or expedient to carry out the purposes of this act (any lease of real or personal property entered into by the board of commissioners shall be for such terms as the board of commissioners determines is in the best interest of the district); to appoint and employ a superintendent and such other agents and employees as said board may deem advisable; to borrow money, incur indebtedness, and issue notes, revenue certificates, bonds, and other evidences of indebtedness of said district; to establish and support subsidiary or affiliate organizations to assist the district in fulfilling its declared public purpose of providing for the health care needs of the people of the district and, to the extent permitted by the State Constitution, to support not-for-profit organizations that operate primarily within the district, as well as elsewhere, and that have as their purposes the health care needs of the people of the district by means of nominal interest loans of funds, nominal rent leases of real or personal property, gifts and grants of funds, or guaranties of indebtedness of such subsidiaries, affiliates, and not-for-profit organizations (any such support of a subsidiary or affiliate corporation or nonaffiliated, not-for-profit corporation is hereby found and

declared to be a public purpose and necessary for the preservation of the public health and for public use and for the welfare of the district and inhabitants thereof); to the extent permitted by the State Constitution, to participate as a shareholder in a corporation, or as a joint venture in a joint venture, which provides health care or engages in activities related thereto, to provide debt or equity financing for the activities of such corporations or joint ventures, and to utilize, for any lawful purpose, the assets and resources of the district to the extent not needed for health care and related activities; and to carry out the provisions of this charter in the manner hereinafter provided. Said board of commissioners, pursuant to chapter 218, Florida Statutes, is authorized and empowered, as the board of a special tax district of the state, to invest district "surplus funds," as defined in that chapter, in such a manner as allowed under section 218.415 Florida Statutes, or by any general law amending or superseding section 218.415, Florida Statutes. The board of commissioners shall also have the power to delegate its authority to invest these surplus funds, as outlined above, to a state or national banking organization acting pursuant to a written trust agreement as a trustee of district funds, provided that such delegation is made in writing by the board of commissioners.

(2) In addition to any investment authorized by general law, and to the extent created by the State Constitution, the board of commissioners shall be and is hereby authorized and empowered to invest any funds in its control or possession in accordance with an investment policy approved by the board which

mandates prudent investment practices, which shall include, among other items, the investment objectives and permitted securities of the policy. Such investment policy shall be designed to maximize the financial return to the fund consistent with the risks incumbent in each investment and shall be designed to preserve the appropriate diversification of the portfolio. Accordingly, the following instruments are authorized for investment:

(a) Bankers' acceptances that are drawn upon and accepted by a commercial bank that is a member bank of the Federal Reserve System, that maintains capital accounts in excess of 7.5 percent of total assets, and which member bank or its holding company carries a credit rating that is one of the two highest alphabetical categories from at least two nationally recognized debt-rating agencies.

(b) Commercial paper of prime quality rated by at least two nationally recognized debt-rating agencies in the highest letter and numerical rating of each agency. If not rated, such prime quality commercial paper may be purchased if secured by a letter of credit provided by a commercial bank, which bank or its holding company carries a credit rating in one of the two highest alphabetical categories from at least two nationally recognized debt-rating agencies.

(c) Interest-bearing bonds, debentures, and any other such evidence of indebtedness with a fixed maturity of any domestic corporation within the United States which is listed on any one or more of the recognized national stock exchanges in the United States and conforms with the periodic reporting requirements

under the Securities Exchange Act of 1934. Such obligation shall either carry ratings in one of the two highest classifications of at least two nationally recognized debt-rating agencies or be secured by a letter of credit provided by a commercial bank, which bank or its holding company carries a credit rating in one of the two highest alphabetical categories from at least two nationally recognized debt-rating agencies.

(d) Negotiable direct obligations of, or obligations the principal and interest of which are unconditionally guaranteed by, the United States Government at the then-prevailing market rate for such securities; and obligations of the Federal Farm Credit Banks, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or Federal Home Loan Bank or its district banks, including Federal Home Loan Mortgage Corporation participation certificates, or obligations guaranteed by the Government National Mortgage Association, which are purchased and sold under repurchase agreements and reverse repurchase agreements. Repurchase agreements and reverse repurchase agreements may be entered into only with a member bank of the Federal Reserve System or primary dealer in United States government securities. Securities purchased or repurchased by the hospital board shall be delivered to the hospital board or its agent versus payment.

(e) The purchase of options so as to engage in bona fide hedging activities for the purpose of protecting the asset value of the underlying portfolio, provided the instruments for such purpose are traded on a securities exchange or board of trade

regulated by the Securities and Exchange Commission or the Commodities Futures Trading Commission.

(f) Equity securities of any corporation that is organized under the laws of the United States, any state, or the District of Columbia and that is listed on any one or more of the recognized national stock exchanges in the United States and conforms with the periodic reporting requirements under the Securities Exchange Act of 1934. Such securities must carry a rating in one of the two highest alphabetical categories from at least two nationally recognized equity ratings agencies.

(3) The Board of Commissioners of the North Broward Hospital District shall have the power to enter into and execute:

(a) Any contract known or referred to as, or which performs the function of, an interest rate swap agreement, forward payment conversion agreement, or futures contract.

(b) Any contract providing for payments based on levels of, or changes or differences in, interest rates.

(c) Any contract to exchange cash flows, payments, or series of payments.

(d) Any type of contract called or designed to perform the function of interest rate floors or caps, options, puts, or calls to hedge or minimize any type of financial risk, including, without limitation, payment, rate, or other financial risk.

(e) Any other type of contract or arrangement that the Board of Commissioners of the North Broward Hospital District determines is to be used, or is intended to be used, to manage

or reduce the cost of indebtedness, to convert any element of indebtedness from one form to another, to maximize or increase investment return, to minimize investment return risk, or to protect against any type of financial risk or uncertainty.

Section 5. Board of commissioners; rules of procedure.--Four commissioners shall constitute a quorum, and a vote of at least three commissioners shall be necessary to the transaction of any business of the district. The commissioners shall cause true and accurate minutes and records to be kept of all business transacted by them and shall keep full, true, and complete books of account and minutes, which minutes, records, and books of account shall at all reasonable times be open and subject to the inspection of inhabitants of said district, and any person desiring to do so may make or procure copy of said minutes, records, books of account, or such portions thereof as he or she may desire.

Section 6. Authority to establish and maintain health care facilities.--The board of commissioners is hereby authorized and empowered to establish, construct, operate, and maintain such hospital or hospitals, supportive facility or facilities, including offices for physicians and other medically related personnel, entities, and activities, and facilities for the care of such persons requiring limited medical care and treatment as in their opinion shall be necessary for the needs and use of the people of said district. Said hospital or hospitals, supportive facility or facilities, and facilities for limited care and treatment shall be established, constructed, operated, and maintained by said board of commissioners for the preservation

of the public health, for the public good, and for the use of the public of said district, and the maintenance of said hospital or hospitals, supportive facility or facilities, and facilities for limited care and treatment within said district is hereby found and declared to be a public purpose and necessary for the preservation of the public health and for public use and for the welfare of said district and inhabitants thereof. The location, establishment, operation, and maintenance of such hospital or hospitals, supportive facility or facilities, and facilities for limited care and treatment, as well as the terms, conditions, and consideration for the use thereof, shall be as determined and fixed by said board of commissioners and shall be under the exclusive authority of said board. The provisions and procedures shall be without reference to section 20. The board of commissioners is hereby further authorized and empowered to establish, operate, or support such subsidiaries, either for profit or not for profit, and not-for-profit affiliates for the furtherance and assistance of the district's fulfilling its purpose of provision for the health care needs of the people of the district as in the board's opinion shall be necessary. The board of commissioners is hereby further authorized and empowered, to the extent permitted by the State Constitution, to support nonaffiliated, not-for-profit organizations that operate primarily within the district, as well as elsewhere, and that have as their purpose the furtherance of the district's provision for the health care needs of the people of the district, by such means as in the board's opinion are necessary and appropriate. The board of

commissioners is hereby further authorized, to the extent permitted by the State Constitution, to participate in, and to provide debt or equity financing for, a corporation in which the district is a shareholder or a joint venture in which the district is a joint venturer, so long as any such corporation or joint venture provides health care services or engages in activities related thereto that benefit the people of the district, as well as others. The establishment, operation, or support of such subsidiaries or affiliates, the support of such nonaffiliated, not-for-profit organizations, and the participation in and funding of such health care corporations or joint ventures are each hereby found and declared to be a public purpose and necessary for the preservation of the public health and welfare of the district and inhabitants thereof. Notwithstanding the provisions of its charter, the district shall comply with the requirements of section 155.40(2)(a)-(e), Florida Statutes, in implementing the powers provided in this section, section 4, and subsection (4) of section 20.

Section 7. Nurse training schools; medical training and research programs.--

(1) The board of commissioners is hereby authorized and empowered at any time in its discretion to establish and maintain, in connection with such hospital and as a part thereof, in accordance with state laws and regulations, a training school for nurses and, upon completion of a prescribed course of training, shall give to such nurses who have satisfactorily completed the course a diploma. The board of commissioners is authorized and empowered to set up all rules

and regulations necessary for the operation of a nurses training school and to make all necessary expenditures in connection therewith.

(2) The board of commissioners is further authorized and empowered to establish and maintain such clinics, medical training, and medical research programs in connection with the operation of district hospitals, including the training of interns and resident physicians, as the board of commissioners, in their discretion, might determine to be necessary or beneficial to the professional services in the district hospitals.

Section 8. Eminent domain.--The board shall have the power of eminent domain and may thereby condemn and acquire any real or personal property within the territorial limits of the district which the board may deem necessary for the use of said district. Such power of condemnation shall be exercised in the same manner as is now provided by general law for the exercise of the power of eminent domain by cities and towns of the state.

Section 9. Indebtedness generally.--

(1) In this act:

(a) The term "anticipation notes" means indebtedness authorized pursuant to subsections (2)-(6) which is payable from funds of the district as set forth therein.

(b) The term "indebtedness" means any bonds, notes, certificates, lease participations, guaranties, or other forms of indebtedness payable from general revenues and other legally available funds of the district.

(2) The district may, in order to provide facilities, including real and personal property, and to carry out, exercise, and perform its powers and duties, and for any other lawful purpose, borrow money from time to time as the board determines is in the best interest of the district and issue and sell the anticipation notes of the district and refund the same by issuing the refunding anticipation notes of the district, all upon such terms and having such maturities, form, and terms as may be determined by the board of commissioners or, if issued in the form of commercial paper, as may be determined by the chair, the vice chair, or the secretary-treasurer within guidelines and limits determined by the board of commissioners as provided in this section. The rate or rates of interest for such borrowing shall be as provided by general law. Further, all indebtedness incurred by the district shall, where required by the State Constitution, be contingent upon voter approval.

(3) The district may borrow money and issue bond anticipation notes in anticipation of the issuance of bonds, all as provided in general law; expend the proceeds thereof for the purposes for which such bonds are to be issued; and pledge, by resolution or contract, the proceeds to be derived from the sale of such bonds and other legally available funds of the district for the payment of the principal thereof, premium therefor, if any, and interest thereon.

(4) The district may borrow money and issue grant anticipation notes having such maturity as the board may determine in anticipation of the receipt of any federal, state, private, or other grant; expend the proceeds thereof for the

purposes for which such grant has been made; and pledge, by resolution or contract, the moneys to be received from such grant and other legally available funds of the district for the payment of the principal thereof, premium therefor, if any, and interest thereon.

(5) The district may borrow money and issue revenue anticipation notes having such maturity as the board may determine in anticipation of the receipt of revenues; expend the proceeds thereof for any other lawful purpose; and pledge, by resolution or contract, revenues of the district for the payment of the principal thereof, premium therefor, if any, and interest thereon.

(6) The district may borrow money and issue tax anticipation notes having such maturity as the board may determine and levy, appropriate, and pledge, by resolution or contract, ad valorem taxes and other legally available funds of the district in payment of the principal thereof, premium therefor, if any, and interest thereon.

(7) The district may issue, from time to time, indebtedness (which may be denominated as notes or bonds) of the district for the purpose of paying all or part of the cost of acquisition, construction, planning, and repairing of, extensions and additions to, and equipping, furnishing, and reconstruction of any hospital or hospitals or related facilities incidental to the foregoing as in the opinion of the board of commissioners are necessary or beneficial for the district, for refinancing any indebtedness incurred to finance any of the foregoing, or for reimbursement of the district for

any cost it incurred for any of the foregoing. The indebtedness of each issuance shall be dated, shall mature at such time or times not exceeding 50 years after their date or dates, shall be in such denominations, shall bear interest at such rate or rates, including variable rates, allowed by general law, and may be made redeemable before maturity at the option of the board of commissioners at such price or prices and under such terms and conditions as may be fixed by the board of commissioners prior to the issuance of the indebtedness.

(8) The district may issue all forms of indebtedness described in subsections (3)-(7) in the form of commercial paper and, if issued in such form, the resolution authorizing the issuance thereof may provide for the renewal, refunding, or rollover thereof from time to time, having such maturity as the board shall determine. The resolution authorizing the issuance of such indebtedness in the form of commercial paper may set forth guidelines and limits pertaining to the maximum aggregate principal amount of such indebtedness which may be outstanding at any one time, the longest maturity any such indebtedness may bear, the form of such indebtedness, the terms (including redemption provisions, the maximum redemption premium which may be permitted, schedules for the amortization of principal and interest which may be permitted, and such other provisions as the board of commissioners may determine), and the maximum rate of interest authorized by general law and may authorize the chair, the vice chair, the secretary-treasurer, or any one or more of them, from time to time, to determine, within such guidelines and limits, the date or dates on which said

indebtedness shall be issued, the aggregate principal amount of indebtedness to be issued at such time, the maturity date or dates of such indebtedness, and the form and terms of such indebtedness (including provisions for redemption thereof, the amount of any redemption premium, the schedule for the amortization of principal and payment of interest, and other provisions as authorized by the board) and to sell, issue, and deliver the same pursuant to such authorization. Any resolution authorizing a negotiated sale of indebtedness in the form of commercial paper to any class of purchaser may likewise authorize the negotiated sale of renewal, refunding, or rollover indebtedness to such class of purchaser and may contain such other provisions as the board may authorize.

(9) Any indebtedness authorized pursuant to subsections (3)-(7) may be issued in the form of demand obligations or obligations which the holder thereof may request payment for by the district upon the occurrence of specified events. The board of commissioners shall determine the form of such indebtedness, which shall be executed according to general law, and shall fix the denomination or denominations of indebtedness and the place or places of payment of principal of and interest thereon, which may be at any bank or trust company within or without the state. All forms of indebtedness shall be executed in the name of the district by the chair of the board of commissioners and countersigned and attested by the secretary of the board, and its corporate seal or facsimile shall be attached thereto or reproduced thereon, all in the manner provided by the resolution authorizing such indebtedness. All indebtedness issued under the

provisions of this act is hereby declared to have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code and the laws of this state. Such indebtedness shall be issuable in bearer form or shall be registrable in the name of the owner or nominee thereof in the manner provided by general law.

(10) The district is hereby authorized to enter into agreements providing for the issuance, repayment, and securing of letters of credit, insurance, or any other credit enhancement device with any financial institution, as the board of commissioners may determine, to further secure any of its indebtedness.

Section 10. Bonds.--District bonds shall be issued or sold in such manner and at such rate or rates of interest as authorized by general law. Such bonds may be sold at par or at such premium or discount as the board of commissioners determines, in keeping with general law.

Section 11. Acceptance of promissory notes.--The board of commissioners is hereby authorized and empowered, in order to provide for and carry out the purposes of this act, to compromise and settle any accounts receivable or other claim for money due and owing to the district through the acceptance of promissory notes according to such terms and conditions as the board, in its discretion, may determine; however, said board of commissioners is hereby prohibited from assigning, selling, or setting over said promissory note to commercial institutions or private collection agencies for collection.

Section 12. Payment of funds.--The funds of the North Broward Hospital District shall be paid out and disbursed according to the manner and procedure established by the board of commissioners of said district. The board of commissioners is hereby authorized and empowered to designate disbursing agents to act on behalf of the North Broward Hospital District for approval of warrants for payment and for the execution of checks and drafts upon district accounts.

Section 13. Property tax authorized.--The Board of Commissioners of the North Broward Hospital District is hereby authorized, empowered, and directed annually to levy upon all the real and personal taxable property in said district a sufficient tax, not to exceed 2.5 mills, necessary for the purposes herein granted and to levy other lawful taxes to pay interest and provide and maintain a sinking fund for payment of interest and principal of the bonds provided for and authorized by this act.

Section 14. Property tax levy.--The levy by said board of commissioners of the taxes authorized by any provision of this act shall be by resolution of said board duly entered upon the minutes of the board. Certified copies of such resolution executed in the name of the board by its chair, under its corporate seal, shall be made and delivered to the Board of County Commissioners of Broward County and to the Florida Chief Financial Officer not later than 60 days after the millage is certified by the property appraiser or such other time as may be specified by general law. It shall be the duty of the County Commissioners of Broward County to order and require the county

property appraiser of said county to assess, and the county tax collector of said county to collect, the amount of taxes so assessed or levied by the board upon the taxable property in said district, not exempt by law, at the rate of taxation adopted by said board of commissioners of said district for said year and included in the warrant of the property appraiser and attached to the assessment roll of taxes for said county each year. The tax collector shall collect such tax so levied by said board in the same manner as other taxes are collected and shall pay the same over to the Board of Commissioners of the North Broward Hospital District within the time and in the manner prescribed by law for the payment by the tax collector of county taxes to the county depository. It shall be the duty of the Florida Chief Financial Officer to assess and levy taxes on all the railroad lines and railroad property and telegraph lines and telegraph property situated or located in said district, including all telephone lines. The taxes shall be assessed by the same officer as are county taxes upon such property, and such taxes shall be remitted by the collecting officer to the Board of Commissioners of the North Broward Hospital District. All such taxes shall be held by said board of commissioners and paid out by them as provided in this act. The board is authorized to pay necessary expenses to the aforenamed officers for the assessment and collection of taxes on a reasonable fee basis.

Section 15. Payment of district expenses.--The board of commissioners is authorized to pay from the funds of the district all expenses of the organization of said board, all

expenses necessarily incurred with the formation of said district, and all other reasonable and necessary expenses, including the fees and expenses of an attorney in the transaction of the business of the district and in carrying out and accomplishing the purposes of this act. This section, however, shall not be construed to restrict any of the powers vested in said board of commissioners by any other section or provision of this act.

Section 16. Publication of annual financial statement.--At least once in each year, the board of commissioners shall publish once in a newspaper published in the district a complete detailed statement of all moneys received and disbursed by them since the creation of the district as to the first published statement and since the last published statement as to any other year. Such statement shall also show the several sources from which said funds were received and shall show the balance on hand at the time of the published statement. It shall show a complete statement of the condition of the district.

Section 17. Persons authorized to be treated at facilities.--Each hospital or clinic established under this act shall be for the use and benefit of the residents of the district. Such residents shall be admitted to such hospital or clinic and be entitled to hospitalization, subject, however, to the rules and regulations prescribed by the board of commissioners, which rules and regulations are effective as of the date of admission of a patient or patients to said hospital or clinic. Such hospital or clinic may care for and treat without charge patients who are found by the board of

commissioners to be indigent, but such board may collect from patients financially able such charges as the board of commissioners may from time to time establish. The board of commissioners may exclude from treatment and care any person having a communicable or contagious disease, where such disease may be a detriment to the best interests of such hospital or clinic or a source of contagion or infection to the patients in its care, unless such hospital has a separate building or ward for the special treatment of such patients and can properly and with safety to the other patients retain such communicable or contagious case in such separate ward or building. Said board of commissioners may extend the privileges and use of such hospital or clinic to nonresidents of the district upon such terms and conditions as the board may from time to time by its rules and regulations provide; however, the residents of the district wherein such hospital or clinic is located shall have first claim to admission.

Section 18. Medical staff generally.--

(1) The Board of Commissioners of the North Broward Hospital District shall authorize and establish one medical staff for the direction and control of the practitioners, and to ensure the performance of necessary professional services, in the hospitals and facilities operated by the North Broward Hospital District. The board of commissioners is hereby authorized and empowered to establish reasonable bylaws, rules, and regulations thereof and to prescribe and establish in said bylaws, rules, and regulations reasonable professional duties and responsibilities for members of the staff so that the

welfare and health of the patients and the best interest of the hospitals may at all times be served.

(2) The board of commissioners is hereby authorized and empowered to grant or refuse, revoke, and suspend membership on the staff and to grant or refuse, revoke, or suspend any privileges attendant to such membership so that the welfare and health of the patients and the best interest of the hospitals may at all times be best served. In addition:

(a) The board of commissioners is hereby authorized and empowered to establish such standards of good moral character, professional ethics, professional competency, and professional conduct to be prerequisites for membership on the staff as the board, in its reasonable discretion, shall determine to be necessary for the protection of the health and welfare of the patients and the hospital, but the failure of the board of commissioners to establish such standards by rule or regulation shall not destroy the power of the board to determine membership on the staff according to the authority, requirements, and standards otherwise prescribed by this act. The board of commissioners is further authorized and empowered to require members of the staff to abide by all the rules, regulations, and bylaws established by the board of commissioners under the authorization of this act; to require the performance of those professional duties and responsibilities prescribed by said rules, regulations, and bylaws; and to enforce such requirements by the revocation and suspension of staff membership and privileges. No person shall be eligible for membership on the staff, be eligible for any privilege of the practice of medicine

in any hospital or facility operated by said district, or retain or possess any membership upon the staff or any privilege of the practice of medicine in any of said hospitals or facilities unless he or she is a graduate of a medical school recognized and approved by the Florida Board of Medicine with the degree of doctor of medicine and possesses a valid license to practice medicine as prescribed and required by chapter 458, Florida Statutes, or, in the alternative, unless he or she possesses a valid license from the Florida Board of Dentistry to practice dentistry as prescribed and required by chapter 466, Florida Statutes.

(b) Whenever the board of commissioners considers the refusal, revocation, or suspension for a period of more than 30 days of staff membership of any person, or any privileges attendant to such membership, a hearing shall be held before the board of commissioners, or before such examining board as the board of commissioners might establish for the purpose of taking and hearing testimony and evidence and reporting to the board thereon, upon the objections to such person's membership and privileges.

(c) Whenever a hearing upon the staff membership and privileges of any person is required by this act, reasonable notice shall be given to the person concerned by registered mail of the time and place of such hearing, and the nature of the objections to the person's membership and privileges shall be made solely upon the record of such hearing and the findings and conclusions made therefor.

(d) The board of commissioners, or such administrative personnel and personnel of the staff and hospitals as the board may authorize and designate, is authorized and empowered to suspend any membership on the staff, and any or all privileges attendant thereto, for a period of less than 31 days without hearing prior to such suspension whenever it appears that delay in such suspension would cause an immediate danger to the hospital or any patient thereof or whenever it appears that the suspended physician has failed to abide by a prescribed rule of administrative or staff procedure in willful or negligent violation of hospital discipline. It is further provided that any staff member suspended for a period of less than 31 days without hearing shall, upon written request to the chair of the board of commissioners, be granted by said chair a speedy hearing in the same manner and according to the same procedure as prescribed for other determinations of staff membership and privileges.

(e) A decision of the board of commissioners to refuse, revoke, or suspend membership on the staff or to refuse, revoke, or suspend any privilege attendant to such membership is hereby declared to be a quasi-judicial function of the board, and any hearing held for the purpose set forth in this section shall be held and conducted in accordance with general law relating to quasi-judicial hearings and determinations. Judicial review of such decision shall be by certiorari to the Fourth District Court of Appeal in the time and manner prescribed by the Florida Appellate Rules unless the provisions of such appellate rules confer exclusive jurisdiction upon the Supreme Court of Florida.

The board of commissioners shall establish such rules of procedure for hearing required by this act as are reasonably necessary to ensure an orderly, fair, and impartial proceeding in which all facts relevant to the objections to the person's membership and privileges may be heard by the examining authority.

(f) The testimony at any hearing required by this section shall be stenographically or mechanically recorded, and such record shall thereafter be transcribed. Such transcription, together with all notices to the person concerned; all documents, exhibits, and demonstrative evidence submitted to the examining authority for consideration at the hearing; all findings and recommendations of the examining authority, if any; and all findings and decisions of the board of commissioners relevant to those proceedings shall be preserved by the district as a permanent record of the proceedings. The physician concerned shall be entitled to a copy or copies of such permanent record, certified by the chair of the board of commissioners to be a true copy thereof, upon written request and payment of a reasonable cost of preparation.

(g) All documents, testimony, and evidence relevant to the proceeding or the issues thereof and the official record of such proceeding shall be confidential to the North Broward Hospital District and the physician concerned, or his or her attorneys and agents, as provided by law. After the final decision of the board of commissioners upon the refusal, revocation, or suspension of membership on the staff or the privileges attendant thereto, the official record of such proceeding as

required by this act may be made public upon the mutual agreement of the board of commissioners and the physician concerned or may be made public by the filing thereof with a court of law for purposes of judicial review.

(3) The Board of Commissioners of the North Broward Hospital District is hereby authorized and empowered to employ professional and nonprofessional personnel necessary to the effective and lawful operation of the hospital and facilities of the district, including, but not limited to:

(a) Registered, practical, and student nurses and nurse's aides.

(b) Physicians licensed or approved by the Florida Board of Medicine necessary to provide emergency medical care and treatment in the emergency rooms of the district hospitals.

(c) Interns and resident physicians who are engaged in an authorized medical training program of the district.

(d) Physicians licensed by the Florida Board of Medicine and technicians specially trained in the basic sciences allied with, and necessary to, the practice of medicine who are necessary to an authorized medical training program of the district or who are necessary to provide professional advice and services to medical staff physicians.

All physicians employed by the North Broward Hospital District as authorized in this subsection shall be members of the medical staff and subject to the medical staff bylaws, rules, and regulations.

(4) The Board of Commissioners of the North Broward Hospital District is further authorized and empowered to establish reasonable rules and regulations to govern the operation of district hospitals and facilities and to govern and control the conduct of all employees, patients, private duty nurses, guests, visitors, or any other parties or persons who are in any manner upon or using the premises and facilities of any district hospital or facility so that the health and welfare of the patients and the best interest of the hospital will at all times be served.

Section 19. Pension plan and insurance benefits for employees.--The North Broward Hospital District is authorized and empowered to create an employees' pension fund to provide for life, disability, and medical insurance for all or any of its employees or officers on a group insurance or other acceptable plan approved by said Board of Commissioners of North Broward Hospital District; to establish and create by resolution an employees' pension, annuity, and retirement plan for any and all groups of officers and employees employed by the North Broward Hospital District and qualifying for such plan; and to pay all or such portion of the cost of any such employees' pension, annuity, and retirement plan from funds available to the district from its authorized sources, with the employees defraying the balance thereof, if any, as said board of commissioners by resolution may determine for any and all groups of officers and employees employed by said North Broward Hospital District. The Board of Commissioners of the North Broward Hospital District is authorized to invest and reinvest

available funds of the pension fund in accordance with the provisions of sections 215.44-215.53, Florida Statutes.

Section 20. Sale or lease of property.--The board of commissioners is authorized and empowered to lease or sell any real or personal property owned by the North Broward Hospital District or to otherwise relinquish and dispose of the district's title in such property according to the following terms and conditions:

(1) Any real or personal property of a fair value of less than an amount to be determined from time to time by resolution of the board of commissioners may be sold, or the title disposed of, according to the manner and procedure and the terms and conditions the board of commissioners at the time might determine.

(2) Any real or personal property of a fair value in excess of the amount established from time to time by resolution of the board of commissioners pursuant to subsection (1) may be sold or disposed of after the board of commissioners has determined by appropriate resolution that such property is surplus to the needs and requirements of the district and after the board of commissioners has submitted the property to the general public for offers by publishing a notice of intent to dispose of property in a newspaper of general circulation in the North Broward Hospital District at least 30 days in advance of such sale or other disposition. Any person desiring such property shall submit his or her offer to buy to the board of commissioners during such 30-day period, or during such longer period as the board might establish, along with the terms and

conditions of such offer. The published notice shall be sufficient if it reasonably identifies the property in question and informs any persons interested in such property that the board of commissioners desires to dispose of said property and seeks offers to buy thereon. It is not required that such notice specify the terms or conditions desired by the district, and if such terms and conditions are included in such notice or otherwise provided, they are to be for general information only and shall not prevent the board of commissioners from accepting different terms and conditions which the board might determine to be more beneficial to the district. Offers submitted by the bidders are not required to be sealed or to be kept confidential to the district, unless otherwise specified in the published notice, and any bidder may submit any number of alternate offers at any time during the bidding period.

(3) The board of commissioners is hereby authorized and empowered to accept any bid upon surplus property and to sell or otherwise convey said property in accordance with the provisions of this section or to reject all the bids as the board of commissioners might determine to be in the best interests of the district.

(4) The board of commissioners is authorized and empowered to convey to Broward County, to any municipality or any other governmental body or agency of the state or of the United States located partially or entirely within the boundaries of the North Broward Hospital District, to any subsidiary, either for profit or not for profit, to any not-for-profit affiliate of the district, or to any not-for-profit organization that operates

primarily within the district and that supports the district's provision for the health care needs of the people of the district any property for a nominal consideration and according to those terms and conditions as the board of commissioners may at that time determine, regardless of the value of such property, whenever it appears to the board of commissioners that such conveyance would be in the best interests of the district and the residents thereof; however, such conveyance for nominal consideration to other than such subsidiaries, affiliates, or not-for-profit organizations as described in this subsection shall not be made until at least 30 days after the terms and conditions thereof have been published in a newspaper of general circulation in the North Broward Hospital District or until residents and taxpayers of the district have been afforded an opportunity to be heard upon such conveyance at a regular meeting of the board of commissioners. It is further provided, however, that the board of commissioners is authorized to give, grant, sell, or convey any easements or rights-of-way for the use of the public, for the use of public utilities, or to support in any manner deemed necessary and appropriate by the board of commissioners a subsidiary, affiliate, or not-for-profit organization as described in this subsection without any requirement for advertising or public hearing.

Section 21. Donations to district.--Any person or persons, firm, organization, corporation, or society, public or private, desiring to make donations of money, personal property, or real estate for the benefit of such district shall have the right to vest title of the money, personal property, or real estate so

donated in said county to be controlled when accepted by the commissioners of said district according to the terms of the deed, gift, devise, or bequest of such property.

Section 22. Acquisition of property from the City of Fort Lauderdale.--The Board of Commissioners of the North Broward Hospital District is authorized and empowered to acquire, by gift, purchase, lease, or otherwise, personal or real property for the benefit of such hospital or hospitals; to enter into agreements or contracts in the acquisition of such real estate or personal property; and to pledge, encumber, or mortgage the acquired property as security for the debt incurred in the acquisition or purchase thereof. Notwithstanding the Charter of the City of Fort Lauderdale to the contrary, the Board of Commissioners of the North Broward Hospital District and the City of Fort Lauderdale are authorized and empowered to negotiate for the sale, transfer, acquisition, purchase, or conveyance of the present hospital or hospitals now owned by the City of Fort Lauderdale under such terms, conditions, and agreements as are acceptable to the City of Fort Lauderdale and to the district. All sales, transfers, or conveyances by the City of Fort Lauderdale to the North Broward Hospital District are hereby declared to be valid and binding, and all laws in conflict therewith are hereby declared to be repealed and invalid.

Section 23. Establishment of hospitals without issuance of bonds.--If the Board of Commissioners of the North Broward Hospital District, by reason of funds on hand, donations, or otherwise, is able to build and establish a hospital or

hospitals without issuing bonds, the board of commissioners is hereby authorized and empowered to establish such hospital or hospitals.

Section 24. Competitive bids to be sought; procedure; authority to negotiate contracts; group purchasing.--

(1)(a) All purchases of supplies, equipment, and materials for use in the operation and maintenance of a hospital or hospitals in excess of an amount to be determined from time to time by resolution of the board of commissioners not to exceed 1.5 mills of the total annual district revenues, and all contracts for construction of improvements authorized under this act at a contract price in excess of said amount, shall be approved only after competitive conditions have been maintained and competitive bids sought from at least three different sources of supply, but this does not necessarily require newspaper advertising. The board of commissioners shall have the authority to modify or negotiate to the extent provided in subsection (2).

(b) All purchases of supplies, equipment, and materials for use in the operation and maintenance of a hospital or hospitals in excess of an amount to be established from time to time by resolution of the board of commissioners not to exceed 1.5 mills of the total annual district revenues, and all contracts for construction of improvements authorized under this act at a contract price in excess of said amount, shall be made or let only after an advertisement inviting bids upon such purchases or contracts has been published in a newspaper of general circulation in the North Broward Hospital District. The

board of commissioners shall have the authority to modify or negotiate to the extent provided in subsection (2).

(c) Bids upon such purchases or contracts shall be sealed and shall not be opened by the North Broward Hospital District until after the last bid to be considered has been received by the district.

(d) All purchases of supplies, equipment, and materials for use in the operation and maintenance of a hospital or hospitals made by the district may be made through participation in group purchasing plans by or with other governmental or nongovernmental agencies at the discretion of the board of commissioners. The district may purchase in accordance with prices established by such group purchasing plans where it can be demonstrated that savings to the district would be realized.

(2) Any plans and specifications provided to prospective bidders shall be solely for the purpose of identifying the purchase or construction desired, and the board of commissioners is hereby authorized and empowered to deviate from such plans, specifications, and instructions in the acceptance of any bid so long as the contract or purchase accepted is substantially similar in function and purpose to that identified. The board of commissioners is further authorized and empowered to agree with the successful bidder for changes and modifications to the successful bid, the total value of changes and modifications not to exceed 20 percent of the agreed price, without voiding the existing contract and without any further bidding procedure.

(3) No bidding procedure prescribed in this section shall apply to work performed by regular employees of the district.

(4) Whenever it reasonably appears to the board of commissioners that, by reason of an emergency or unusual conditions, compliance with the bidding procedures prescribed by this section would be detrimental to the interests of the North Broward Hospital District, the board of commissioners may by appropriate resolution identify such emergency or unusual condition and authorize the purchase or construction desired without compliance with the prescribed bidding procedures of this section.

Section 25. Bad debts.--The board of commissioners is authorized to declare accounts receivable uncollectible and to write such accounts off the active books and financial records of the district as bad debts. The board of commissioners is further authorized to destroy the account records of those accounts declared to be bad debts, but such records shall not be destroyed earlier than 4 years after the annual audit of the district reflecting such writeoff has been sent to the office of the Florida Chief Financial Officer, as required by law.

Section 26. Settlement of claims of district against others.--The board of commissioners shall be authorized and empowered to compromise and settle any accounts receivable or other claim on money due and owing to the district according to such terms and conditions as the board of commissioners in its discretion might determine. It is expressly provided that factors which may be considered by the board of commissioners in such compromise are the ability of the debtors to pay and the probabilities of collection in full. The board of commissioners is further authorized and empowered to sell, assign, or convey

to any person the right, title, and interest of the district in any account receivable or judgment owned by the district by full or partial payment of such account or judgment as the board of commissioners in its discretion might determine. The board of commissioners is further authorized and empowered to subordinate its interest in any mortgage or judgment lien to the interests of any third parties according to such terms and conditions as the board of commissioners in its discretion might determine.

Section 27. Payments to other medical institutions.--The board of commissioners is authorized and empowered to obligate the district for the payment of hospital and nursing home expenses for patients transferred from hospitals of the district to such other institutions at the district's request, provided that said patients shall be first certified to be medically indigent by the North Broward Hospital District, based upon the definition and standards used by the state. The authority to obligate the district to such institutions may be delegated by the board of commissioners to such administrative officers of the district as the board might believe to be necessary and proper, and such obligations may be incurred by the district according to such circumstances, terms, and conditions as the board of commissioners might determine or specify.

Section 28. Parking facilities.--The board of commissioners is authorized and empowered to establish, construct, and maintain such automobile parking facilities upon district property as the board of commissioners in its discretion might determine to be necessary and proper to a hospital facility. The board of commissioners is further

authorized and empowered to charge such fee for the use of such facilities as it might determine.

Section 29. Medical research.--The board of commissioners is hereby authorized and empowered at any time in its discretion to establish, maintain, or participate in such programs and projects of and for medical research, education, and development affecting human physical or mental health and well being as it may deem desirable. In connection with such programs and projects, the board of commissioners is authorized and empowered to cooperate with public and private educational or research institutions, corporations, foundations, or organizations of any and all types as well as agencies, departments, divisions, branches, or bodies of government, or created by government, whether federal, state, county, municipal, or otherwise. In furtherance of such programs and projects, said board of commissioners is further authorized and empowered to expend moneys and utilize assets and property, real or personal, of the district and to receive donations, grants, or gifts of money or property, real or personal, from any person or persons, firm, organization, corporation, society, institution, foundation, or legal entity of whatever nature, whether private, governmental, or public.

Section 30. Fiscal year.--Notwithstanding the provisions of section 218.33, Florida Statutes, the fiscal year of the North Broward Hospital District shall commence July 1 and end June 30 of each calendar year.

Section 31. Use of Florida Industrial Development Financing Act.--The district is hereby declared to be a local

agency as defined in section 159.27, Florida Statutes, and shall have all additional powers set forth in part II of chapter 159, Florida Statutes, to be exercised in furtherance of the purposes of the district.

Section 32. Transfer or lease of facilities to not-for-profit corporations authorized.--

(1) The district shall have the authority to transfer, by lease, installment sale agreement, or otherwise, any or all of its hospitals and other facilities to one or more Florida not-for-profit corporations for the purpose of operating and managing such facilities and to enter into leases with one or more Florida not-for-profit corporations for the operating of such facilities. The term of any such lease, contract, or agreement and the conditions, covenants, and agreements to be contained therein shall be determined by the board.

(2) Any lease, contract, or agreement made pursuant to subsection (1) shall:

(a) Provide that the articles of incorporation of such not-for-profit corporations initially be subject to the approval of the board of commissioners of the district.

(b) Require that the not-for-profit corporations become qualified under s. 501(c)(3) of the United States Internal Revenue Code.

(c) Provide for the orderly transition of such facilities to not-for-profit corporations.

(d) Provide for the return of such facility to the district upon the termination of such agreement or the dissolution of such not-for-profit corporations.

Section 33. Community Redevelopment Act of 1969.--

(1) Notwithstanding the provisions of part III of chapter 163, Florida Statutes, the Community Redevelopment Act of 1969, the North Broward Hospital District shall not be deemed to be a public body or taxing authority as those terms are used in part III of chapter 163, Florida Statutes.

(2) This section shall not apply with respect to community redevelopment agencies established prior to January 1, 2002.

Section 34. Liberal construction of act.--The provisions of this act shall be liberally construed for accomplishing the work authorized and provided for or intended to be provided for in this act, and where strict construction would result in the defeat of the accomplishment of any part of the work authorized by this act and a liberal construction would permit or assist in the accomplishment thereof, the liberal construction shall be chosen.

Section 4. Severability.--Any provision of this act which for any reason may be held or declared invalid or unenforceable may be eliminated, and the remaining portion or portions thereof shall remain in full force and be valid and enforceable as if such invalid or unenforceable provision had not been incorporated therein.

Section 5. Chapters 27438 (1951), 61-1931, 61-1937, 63-1192, 65-1316, 65-1319, 67-1170, 67-1171, 69-895, 69-898, 69-914, 70-622, 71-567, 71-576, 71-578, 73-411, 73-412, 73-413, 74-449, 75-347, 75-348, 76-338, 77-508, 78-481, 80-464, 80-468, 81-354, 84-399, 86-369, 87-508, 90-485, 91-351, 97-372, and 2002-363, Laws of Florida, are repealed.

Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1253 Broward County, Florida
SPONSOR(S): Sobel
TIED BILLS: **IDEN./SIM. BILLS:** HB 1083

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Local Government Council	8 Y, 0 N	DiVagno	Hamby
2) Fiscal Council		Monroe	Kelly
3)			
4)			
5)			

SUMMARY ANALYSIS

The Department of Revenue (DOR) conducts an in-depth review of every property appraiser's assessment rolls at least every two years. DOR creates a report on each assessment roll. Included in the report is DOR's confidence level in the property appraiser's rolls based on DOR's use of various statistical and analytical measures, which are also included in the report. DOR then forwards this report to the Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee, and the property appraiser. Once DOR presents the property appraiser with its report, the report becomes a public record.

This bill requires that the Broward County Property Appraiser forward a copy of DOR's report to the Mayor of Broward County, each county commissioner, and the county auditor.

This bill would take effect upon becoming law.

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2005-06 or 2006-07.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill increases the duties of the Broward County Property Appraiser by requiring them to the forward a copy of the reports they receive from the Department of Revenue to the Mayor of Broward County, each county commissioner, and the county auditor.

B. EFFECT OF PROPOSED CHANGES:

Current Situation in Assessment Rolls:

Property appraisers[1] are required to assess all property in their county and prepare assessment rolls for all real property and tangible personal property.[2] An assessment roll is a record of all taxable property within the tax district which is completed, verified, and reported to the Department of Revenue (DOR) by the property appraiser. DOR has supervisory authority over property appraisers under chapter 195, F.S. DOR prescribes forms, rules and regulations for assessing and collecting taxes, establishment of standards of value, manual of instructions, classification of property, budgetary processes, and review of assessment rolls.

Each assessment roll is submitted to DOR for review. The purpose of the review is to determine that the rolls meet the appropriate requirements of law relating to form and just value.[3] DOR is required to conduct an in-depth review of the assessment rolls for each county no less than once every two years. At a minimum, DOR is to review the level of assessment for the county in relation to just value of each of the various classifications of property found in s. 195.0969(3)(a), F.S. The in-depth review may include review of the proceedings of the value adjustment board and the audit or review of procedures used by the counties to appraise property.

Within 120 days after receiving a county's assessment roll, or within 10 days after approving it, whichever is later, DOR is to finalize its review and forward its findings to the Senate Finance, Taxation, and Claims Committee, the House Finance and Taxation Committee, and the appropriate property appraiser. DOR is to include in its findings a statement of the confidence interval for the median, other measures studied, and the roll as a whole[4], and related statistical and analytical information.[5] DOR's report becomes a public record, subject to chapter 119, F.S., once it is released to the property appraiser.[6]

Effect of Bill:

This local bill requires the Broward County Property Appraiser to forward a copy of the report to the Mayor of Broward County, each of the nine county commissioners, and the county auditor, within 90 days of receiving the report from DOR. The report shall include the same results provided to the Broward County Property Appraiser by DOR. The copy is required to include:

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[1] Property Appraisers are independently elected, constitutional officers. Art. VII, section 1(d), Florida Constitution.
[2] Sections 192.011 and 193.114, F.S.
[3] Section 193.1142(1), F.S.
[4] The confidence interval is a statistical measure of the reliability of DOR's sample. E-mail from David Beggs of DOR (March 8, 2006).
[5] Section 195.096(2)(f), F.S.
[6] Section 195.096(2)(e), F.S.

- All statistical and analytical measures taken for the real property assessment roll as a whole and the personal property assessment roll as a whole.
- The results of any audit or review of procedures the county property appraiser used to appraise the property, listed independently for each class or sub class of real property studied.

For the years in which Broward County is not under in-depth review, the report forwarded by the property appraiser must include any value-weighted mean level of assessment projected for that year pursuant to state law.[7]

C. SECTION DIRECTORY:

Section 1: Requires Broward County Property Appraiser to forward copies of the Department of Revenue's report.

Section 2: Provides an effective of upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? January 10, 2006

WHERE? *Sun-Sentinel*, Broward/Palm Beach/Miami Dade County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

According to the Economic Impact Statement, no fiscal impacts are anticipated for either fiscal year 2005-06 or 2006-07.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

[7] These projections are made by DOR and based upon the best information available, utilizing professionally accepted methodology, and separately allocate changes in total assessed value to: new construction, additions, and deletions, changes in the value of the dollar, changes in the market value of property, and the level of assessment. Section 195.096(3)(b), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

According to the Economic Impact Statement, the advantage of this bill is the public scrutiny and examination improves public performance. When the present Broward County Property Appraiser, a former County Commissioner and School Board Member, took office, she was unaware of these reports. When she became aware of these reports, she requested copies from the Department of Revenue. The reports showed that Broward County had not been in compliance for years. Her position is that had these reports been known, the property appraiser would have had to fix the problem or the audits would have been used against them during elections.[8]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

[8] E-mail from Lori N. Parrish, March 20, 2006.

A bill to be entitled

An act relating to Broward County, Florida; requiring the Property Appraiser of Broward County to forward a copy of the findings of the Florida Department of Revenue regarding the Broward County Assessment Rolls to the Mayor of Broward County, each county commissioner, and the county auditor; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The Property Appraiser of Broward County shall, within 90 days after receipt of the findings of the Florida Department of Revenue regarding the Broward County Assessment Rolls, forward a copy of the findings to the Mayor of Broward County, each county commissioner, and the county auditor. The results furnished to the Mayor of Broward County, each county commissioner, and the county auditor shall include the same results as furnished to the county property appraiser, such as all statistical and analytical measures computed for the real property assessment roll as a whole, the personal property assessment roll as a whole, and, independently for the real property classes and subclasses studied, results of any audit or review of procedures used by the county property appraiser, and, if Broward County is not being studied in the current year, any value-weighted mean levels of assessment projected for that year pursuant to state law.

Section 2. This act shall take effect upon becoming a law.